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THE PUBLIC FINANCE OF SANTO DOMINGO

SANTO DOMINGO occupies a position of peculiar interest to the United States of America. Historically its close connection with the adventures of Columbus and its fostering of the first white settlement in the western hemisphere surround it with a glamor of romance, which has not been dulled by its four hundred years of turbulent history. Geographically it has stood for four centuries on the great trade route between the old world and the new. Of late its relations with the government of the United States exhibit a novel experiment in statesmanship and an illuminating example of American policy toward our Central and South American neighbors. The American people might well give more than passing attention to what is now being done in behalf of this interesting ward of ours.

The sad story of Santo Domingo's long-continued attempt at self-government, with its bewildering succession of presidents and its turbulent record of revolution and bloodshed, is fairly well known. Reckless finance and flagrant disregard of its national debt obligations finally brought the threat of forcible action by certain European powers, a threat fraught with menace to the safety of the United States and the future of the western world. In desperation the Dominican government appealed to the United States, and in 1905 an agreement was entered into, under which the collection of the Dominican customs and the management of its national debt were assumed by the United States. Under this arrangement the debt was put on a firm foundation, the customs were honestly and effici-

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ently managed, and considerable improvement was wrought in the republic's financial condition.

But the old ways were not to be so easily shaken off. The national habit of revolution and irresponsible finance continued. Gradually, in violation of the treaty with the United States, a new national debt grew up. This fact and the menace of increasing internal disorders finally led the United States to occupy the country in November, 1916. A military government, under the authority of the United States, now administers the executive and legislative departments of the national government. The judicial branch and, in the main, the local governments have been left in the hands of the Dominicans.

During its short occupancy, the military government has found itself so occupied with problems of immediate urgency, that the serious task of reforming the country's financial system has not yet been undertaken, although the national administration, particularly of the internal revenue system, has been greatly improved.

The present article is based upon investigations made during the winter of 1917–18 by the writer, as financial adviser of the military government. Its purpose is to make clear the main features of the problem confronting the military government in its endeavor to give the Dominican Republic a sound structure of public finance.

To understand Santo Domingo's financial problem some knowledge of her political and economic organization is necessary. The Dominican Republic occupies the eastern two-thirds of the island, of which Haiti forms the western part. It has an area of approximately 19,000 square miles and a population variously estimated at from 500,000 to 1,000,000. The country is divided into twelve provinces, which are subdivided into sixty-five communes. There has never been a survey or a census. These statements of area and population are estimates, while the boundaries of provinces and communes are determined only roughly by custom and tradition.

The national government is a republic, with the ordinary legislative, executive, and judicial departments. The chief executive is the president. He has a cabinet of seven secretaries,

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heads of departments. The national congress consists of a senate and a chamber of deputies. There are a supreme court, three courts of appeals, and lesser courts in the provinces and communes. Since the occupation by the United States in November, 1916, the executive and legislative powers have been vested in the military government.

The provincial governments are of little importance. Their functions are primarily military and they do not play any real part in the civil government. Each province is under a governor, appointed by the president. These governors were usually local chiefs or bandits. Through their control of the military system they were largely independent, and often in revolt against the national government. In each commune there is a *jefe comunale*, a local military officer under the authority of the governor. Since the military government has abolished the Dominican army and put in its place the *Guardia Nacional*, a combined militia and police force, there remains little reason for the continued existence of the provinces.

The communes are the seats of local government. The government is vested in a municipal council (*ayuntamiento*) which has charge of the ordinary local interests. There is less local autonomy than in the United States. The organization and functions of the communes are prescribed by the national constitution and laws, and the national government exercises a considerable control over local affairs. There are also certain cities and towns, with limits more or less definitely set by custom or local ordinances. However, a city or town is really only the urban part of the commune and has no government separate from that of the commune.

Economically Santo Domingo presents an interesting combination of large material resources and primitive economic organization. Though richly endowed by nature and favored in soil and climate, four hundred years of white settlement have scarcely witnessed the beginning of the development of her resources.

The products of the country are chiefly those that can be obtained by simple extractive processes. The most im-

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portant are sugar, cacao, tobacco, coffee, skins and hides, bananas and some other fruits, honey and wax, cotton and some other vegetable fibres and cocoanuts. General farming and truck gardening scarcely exist, beyond the small garden patch that supplies the family table. Even agricultural products that could apparently be successfully raised in the country are imported. For example, rice, one of the chief articles of diet, is practically all imported.

The country has large timber resources, including mahogany, lignum-vitae, and other valuable woods. A small amount is obtained for local use, and a little is exported, but there is no logging industry of any importance. Near the important seaports the supply of marketable timber is about exhausted, whereas the enormous forest resources of the interior have scarcely been touched. The lack of transportation facilities is the chief obstacle.

Not much is known of the country's mineral resources. Oil has been found but not successfully marketed. There is some mining of copper. Opinion differs as to what the future has in store for the prospector. Although there is abundance of fish in the surrounding waters, there is no important fishing industry.

The sugar-grinding mills are generally large establishments, well equipped with modern machinery. But aside from this, there is almost no development of manufacturing. About the only examples are a few distilleries and some small factories making soap, cigars, cigarettes and candles.

The country suffers grievously from the backward state of its transportation facilities. There are only two railroads, with a combined length of barely 150 miles. There are no electric railways. Good roads are almost unknown. Within the past few years about 110 miles of modern roads have been built—the only roads there are except primitive country roads and rough trails. Large parts of the country are practically inaccessible. Transportation on land is by pack animals and rude carts, with a few motor 'bus lines operating between places connected by roads. Most of the important towns are on the sea coast, and transportation between them is by boat, with

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poor and irregular service. It goes without saying that internal commerce is only slightly developed, though inadequate transportation is not the only cause.

Foreign commerce, on the other hand, is relatively of great importance. Since the Dominicans have almost no manufacturing industry, they rely for nearly all manufactured goods upon imports, in payment for which they export the raw materials derived from their extractive industries. This dependence upon imported goods makes their foreign commerce more important than the mere figures would indicate. The following table shows the total value of imports and exports in recent years:[1]

FOREIGN COMMERCE

	Exports	*Imports*
1905	$6,986,098	$2,736,828
1906	6,536,378	4,065,437
1907	7,628,356	4,948,961
1908	9,396,487	4,767,775
1909	8,113,690	4,425,913
1910	10,849,623	6,257,691
1911	10,995,546	6,949,662
1912	12,385,248	8,217,898
1913	10,469,947	9,272,278
1914	10,588,787	6,729,007
1915	15,209,061	9,118,514
1916	21,527,873	11,664,430

The large excess of exports is in part explained by the heavy annual payment for interest and amortization of the national debt, which is in the neighborhood of two million dollars a year. Interest and profits on foreign investment are also important elements in the trade balance. It is interesting to note the rapid growth of foreign commerce since the Customs Receivership began compiling the statistics. Part of this nominal increase is of course due to rising prices.

The chief articles of export are the products of the country's leading extractive industries already mentioned. The following are the values of the most important items for the years 1915 and 1916:[2]

[1] Report of Dominican Customs Receivership, 1916, p. 46.

[2] *Ibid.*, pp. 36–39.

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VALUE OF LEADING EXPORTS

	1915	1916
Sugar (raw)	$7,671,383	$12,028,297
Sugar cane	195,782	295,622
Molasses (of sugar)	100,023	120,738
Cacao	4,863,754	5,958,669
Tobacco leaf	972,896	1,433,323
Coffee	458,431	316,827
Goat skins and cattle hides	270,356	334,665
Bananas	166,434	172,615
Wax	113,050	111,415

The imports into the country represent a great variety of necessities, mostly, though not all, manufactured articles. The thirteen principal groups, with the values of each in 1915 and 1916, are reported by the Dominican Customs Receivership as follows: [1]

VALUE OF LEADING IMPORTS

	1915	1916
Cotton, and manufactures of	$1,913,143	$1,721,534
Iron and steel, and manufactures of	1,200,810	1,562,367
Rice	908,876	1,080,068
Wheat flour and other breadstuffs	692,544	737,713
Provisions, meat, and dairy products	541,408	530,195
Wood and manufactures of	242,051	317,421
Oils	514,111	545,284
Fibres (vegetable) and manufactures of	360,000	508,644
Leather, and manufactures of	296,799	385,518
Fish and fish products	262,580	309,204
Chemicals, drugs, and dyes	200,509	293,072
Vehicles and boats	146,143	408,832
Agricultural implements	77,238	121,830

Other important groups of imports are coal; grease, resins, and caustic soda for the manufacture of soap; bottled beer; metal and manufactures of metal; paper and manufactures of paper; soap; sugar and confectionery; and vegetables.[2]

Business organization is generally simple and primitive. There are few corporations and, with some notable exceptions, there is no development of "big business." There are three

[1] Report of the Dominican Customs Receivership, 1916, pp. 22 and 30.

[2] *Cf.* Annual Summary of Commerce, published by the Dominican Customs Receivership.

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banks. Two are branches respectively of the International Banking Corporation of New York and the Royal Bank of Canada. They do a considerable business. The Banque Nacional is a local institution of less importance. The sugar mills and estates are the largest and most highly organized business enterprises. They belong to large corporations owned by foreign investors. Much of the sugar cane, however, is grown on small plantations by native *colonos*, who sell the cane to the mills. A foreign corporation owns the one large banana plantation. Practically all the other agricultural industry is in the hands of individuals or small companies. A corporation of foreign investors is mining copper in a small way. There are no large interests engaged in cattle-raising or logging. Of the two railroads, one belongs to the Dominican government; the other is owned by a corporation of Scotch and English capitalists. There are no other large corporations in the transportation business except the steamship companies. There are just two locally-owned steamboats, each belonging to a local corporation. The submarine cable and certain land telegraph wires are operated by the French Cable Company. The government operates the rest of the telegraph and the telephone business and the wireless system.

There is little accumulation of wealth among the people. Only a very few persons could be called wealthy, and even the class of the well-to-do is small. Most of the people are distinctly poor, having barely enough to support a decidedly low standard of living. Maintaining this standard, however, is an easy matter, on account of the climate and the bounty of nature.

Such educational system as exists is most primitive. No large amount is devoted to education either by the government or by private institutions. The church does only a little in the way of teaching. Church and state are practically separate, though the Roman Catholic religion is recognized in the constitution as the national religion. There are no large holdings of land or other wealth in the hands of the church or religious orders.

The national government has an annual gross income of five

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or six million dollars, the greater part of which comes from customs and the remainder from a variety of internal taxes and government enterprises. The table on page 469 shows the revenue from the principal sources for the past nine years (the fiscal year is the calendar year).

The gross revenue from customs is considerably greater than shown in this table. The figures given are the net amounts turned over to the Dominican government by the Customs Receiver. Since April 1, 1905, the customs revenue has been collected by a general receiver of Dominican customs appointed by the president of the United States, under a *modus vivendi* from April 1, 1905, to July 31, 1907, and since then in accordance with a treaty between the Dominican Government and the United States promulgated February 8, 1907. All customs received (including duties on imports, duties on exports, and port dues) are collected by the general receiver. From each year's revenue he pays to the fiscal agent of the Dominican government in New York for the service of the Dominican national debt ($20,000,000 in amount) $1,200,000 plus half the amount by which the customs revenues of any year (duties on imports and exports) exceed the sum of $3,000,000. The general receiver also deducts the expenses of collecting the revenue (limited by the treaty to 5 per cent. of the collections). Since January 1911, the whole 5 per cent. has been deducted and the unexpended balance set aside in a special fund to provide for buildings for the receivership and contingencies. There are certain other minor disbursements which the general receiver is authorized by the Dominican government to make, and the balance remaining is turned over to the Dominican government as shown by the figures for customs revenue in the table on page 469.

The table on page 470 shows the total customs collections from April 1, 1905, to December 31, 1917, as reported by the general receiver of customs.[1] Prior to January 1, 1915, these figures are not exactly comparable with the figures of net customs

[1] *Cf.* Report, p. 4.

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REVENUES OF NATIONAL GOVERNMENT

	1909	1910	1911	1912	1913	1914	1915	1916	1917
Alcohol tax	$281,589.35	$266,828.98	$219,833.29	$187,127.96	$214,388.54	$178,603.67	$132,608.04	$168,866.08	$326,061.91
Stamp tax	101,297.43	127,356.37	175,071.14	217,313.79	129,070.71	448,607.29	116,220.70	166,985.34	316,683.14
Stamped paper	57,844.71	78,613.64	99,874.50	105,611.00	67,198.91	119,611.73	74,720.69	74,905.28	161,358.54
Public wharfage taxes	44,688.05	239,507.63	225,653.30	191,533.47	193,401.66	183,363.44	140,377.00	154,364.50	238,838.02
Consular fees	12,092.00	17,661.45	22,164.10	26,928.95	39,497.78	39,374.64	38,558.66	49,132.25	74,489.07
Tax on auction sales	1,070.45	519.42	1,286.10	615.52	649.72	1,301.82	905.73	836.43	803.67
Tax for illumination of Ozama River	2,644.91	2,258.64	2,099.13	2,216.13	2,551.06	2,372.61	4,751.37	5,214.65	1,530.02
Registration of trade marks	.....	.....	.....	.....	461.18	610.00	200.00	630.00	705.00
Postage stamps	28,226.51	32,718.00	42,914.10	47,257.13	27,919.38	79,068.35	31,029.21	29,179.93	48,222.40
Registered letters	5,480.22	4,326.56	6,591.86	3,929.91	4,893.09	3,953.00	5,216.34	6,490.16	12,570.53
Telegraph and telephone	13,400.95	13,429.26	20,008.99	14,901.01	13,410.50	7,171.45	4,325.12	3,839.25	22,792.29
Radiograph	.....	..	.....	.....	3,870.06	.....	5,853.19	3,553.43	4,406.18
Rent of government lands	.....	854.57	419.93	456.15	255.40	4,470.22	239.41	265.58	707.34
Interest	.....	.....	.....	.....	.....	.....	.....	4,454.76	9,454.29
Miscellaneous	.....	.....	.....	.....	2,995.12	.....	4,361.41	5,445.46	15,554.92
Total internal revenue	548,334.58	784,074.52	815,916.44	797,891.02	700,563.11	1,068,508.22	559,366.87	674,163.10	1,234,177.32
Customs revenue, net	1,586,742.00	1,627,227.60	1,931,000.00	2,028,600.00	1,678,944.22	1,172,553.39	1,646,090.08	1,678,282.55	2,195,783.75
Total revenue	$2,135,076.58	$2,411,302.12	$2,746,916.44	$2,826,401.02	$2,379,507.33	$2,241,061.61	$2,205,456.95	$2,352,445.65	$3,429,961.07

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revenue in the preceding table since before that date the receivership's fiscal year was not the calendar year:

GROSS CUSTOMS COLLECTIONS

Gross collections during the first year of the *modus vivendi*, April 1, 1905, to March 31, 1906	$2,502,154.31
Second *modus vivendi* year, to March 31, 1907	3,181,763.48
Four months' period, April 1 to July 31, 1907 (termination of *modus vivendi*)	1,161,426.61
First convention year, August 1, 1907, to July 31, 1908.	3,469,110.69
Second convention year, to July 31, 1909	3,359,389.71
Third convention year, to July 31, 1910	2,876,976.17
Fourth convention year, to July 31, 1911	3,433,738.92
Fifth convention year, to July 31, 1912	3,645,974.79
Sixth convention year, to July 31, 1913	4,109,294.12
Seventh convention year, to July 31, 1914	3,462,163.66
Five months' period August 1, 1914, to December 31, 1914	1,209,555.54
Ninth fiscal period, January 1 to December 31, 1915.	3,882,048.40
Tenth fiscal period, January 1 to December 31, 1916.	4,035,355.43
Eleventh fiscal period, January 1 to December 31, 1917.	5,353,163.14
Total	$45,682,114.97

The estimated revenues for 1918, according to the budget of the military government,[1] are as follows:

GROSS REVENUE

Duties on imports	$4,380,000
Duties on exports	300,000
Port dues.	120,000
Consular fees	75,000
Wharfage taxes	200,000
Alcohol tax	250,000
Stamp tax.	280,000
Stamped paper	160,000
Dominican Central Railroad	320,000
Sale of postage stamps	40,000
Telegraph and telephone	20,000
Radiograph.	5,000
Rentals.	500
Tax on auction sales	500
Registry fees (post office)	7,000
Rent of post-office boxes	500
Fees for registration of trade-marks.	500

[1] Executive Order No. 106, Gaceta Oficial No. 2868 (a), December 29, 1917.

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(*Continued.*)

Interest on deposits	20,000
Registry fees, licenses and fines imposed by the new highway law	5,000
Unexpended balance of receipts under Executive Order No. 88 (bonding of employes)	25,000
Miscellaneous	1,000
Total gross revenue	$6,210,000
National debt service and other deductions	3,047,000
Net revenue	$3,163,000

The general headings under which the above net revenue was appropriated in the budget of 1918 are as follows:

APPROPRIATIONS

Legislative Department	$8,280.00
Executive Department	21,468.00
Judicial Department	508,790.52
Interior and Police	265,928.00
Foreign Affairs	71,307.25
Treasury and Commerce	483,494.00
War and Navy	713,221.50
Justice and Public Instruction	378,680.00
Agriculture and Immigration	92,210.00
Public Works and Communications	409,154.00
Surplus	210,466.73
Total	$3,163,000.00

A simple analysis will suffice to bring out the salient features of the Dominican revenue system. The following table shows the result of an analysis of the gross national revenue for the years 1916 and 1917 and the budget estimate of revenue for 1918:[1]

	1916		*1917*		*1918*	
Customs taxes	$4,035,355	85.7%	$5,353,163	81.3%	$4,800,000	77.6%
Excise taxes	410,757	8.7	804,104	12.2	690,000	11.2
License and business taxes	210,178	4.6	316,366	4.8	281,000	4.5
Prices	47,783	1.0	98,153	1.5	413,000	6.7
Miscellaneous	5,445	..	15,555	0.2	1,000	..
Total gross revenue	$4,709,518	100.0	$6,587,341	100.0	$6,185,000	100.0

[1] In the budget of 1918 there has been excluded an item of $25,000, being the unexpended balance of funds appropriated in 1917 to pay the government's share of the premiums for the bonding of employes. This is not, strictly speaking, revenue.

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Customs taxes include duties on exports, duties on imports, and port dues. Approximately nine-tenths of the customs revenue comes from import duties. Excise taxes include the alcohol tax, stamp taxes, and stamped paper. License and business taxes include wharfage taxes, consular fees, tax on auction sales, fee for registration of trade marks, highway fees, penalties, and tax for illumination of the Ozama River. The following receipts are prices: postal receipts for stamps, registry, rent of boxes, telephone and telegraph and radio receipts, revenue of the Dominican Central Railroad (in 1918), rentals, and interest. Interest and rentals are the only prices that mean a net revenue, since the receipts from government industrial enterprises are in each case exceeded by the expenses.

The most significant feature of the Dominican revenue system is the complete reliance upon indirect taxation and the great importance of the customs. No other tax item amounts to as much as five per cent. of the revenue. The entire absence of direct taxation is noteworthy. Study of the details of the tax system fails to show any attempt to make the tax burden conform to the principle of ability to pay. The recognized tendency of indirect taxes to bear most heavily on the poor is evident. The customs and excise duties are mainly on necessities, and the rates are high, in many cases fully up to what the traffic will bear, or even beyond. Attention has been called to the dependence of the Dominicans upon foreign trade for many of the necessities of life. The customs duties add materially to the cost of living and put many important articles practically out of the reach of the mass of the people. The general tendency of heavy customs and excise taxes to hamper business and check industry is evident. There can be no doubt that the tax system is one of the causes of the country's backward economic development. It is a recognized principle of public finance that the revenue from customs and excises is peculiarly uncontrollable, depending upon the state of trade and industry. This is a serious matter for any country that relies so largely upon such revenue.

The total national revenue is a large amount when consideration is taken of the population and economic condition of the

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country. An annual revenue of five to seven million dollars is contributed by a population of less than a million, very probably not over five or seven hundred thousand. This means a per capita tax of about ten dollars, which, in view of the poverty of the people and the country's backward economic development is a heavy burden.

There is no doubt of the adequacy of the revenue to meet the needs of the government and build up a surplus for contingencies and needed public improvements, on the assumption of honest and efficient government. The present military government, while greatly improving all branches of the public service and putting considerable sums into new public works, had at the end of 1917 accumulated a surplus of $1,600,000, and its budget for 1918 allowed for a surplus of over $200,000.

The finances of the Dominican provinces may be dismissed in few words. As stated above, the provinces are of little importance in the civil government; financially they are equally insignificant. They have no independent sources of revenue and receive no contributions from the communes. Their expenditures are all paid directly by the national government and provided for in its budget. These expenditures consist of the salaries of the governors and their secretaries, clerks and messengers, office rent and incidental expenses, with similar expenditures for the *jefes comunales* and their offices. The sums appropriated for provincial expenses in the budget of 1918 were:

For the provincial governors	$47,772
For the *jefaturas comunales*	34,860
Total.	$82,632

The financial organization and powers of the communes are strictly limited by the national constitution and laws. Communal taxes may be imposed only with the consent of the national congress.[1] The cities and towns have no financial independence and no sources of revenue of their own. Certain

[1] *Cf.* Constitution, Art. 24, par. 2; Art. 35, par. 31; Art. 78. Also Ley de Comunes, Art. 32, par. 27; Art. 43-45.

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communal taxes may, however, apply only within the city limits, as for example the tax on rentals imposed to cover the cost of city street lighting.

The present communal revenue system is a remarkable affair, fearfully and wonderfully made. At least thirty-three different sources of revenue are distinguishable. There are no satisfactory statistics, official or otherwise, of communal finances. Through the kindness of the national controller general, the writer obtained reports from nearly all of the communes covering the revenues of the year 1916 and the budget estimates for 1917. From these reports the following table, showing the totals for all communes from which reports were obtained, is compiled:

SOURCES OF COMMUNAL REVENUE[1]

	Revenue 1916	*Budget 1917*
1. Business licenses	$113,551	$141,102
2. Alcohol tax, production	58,237	66,494
3. Consumption tax on alcoholic beverages.	24,574	30,956
4. Registration fees, documents	36,012	39,740
5. Slaughter house privilege	36,000	45,988
6. Meat market privilege	75,271	92,326
7. Produce market privilege	35,977	41,966
8. Lumber yard privilege	660	725
9. Tax on lotteries.	55,188	62,600
10. Municipal lottery (income)	16,926	17,527
11. Tax on lottery tickets of one municipality sold in another.	13,210	16,370
12. Tax on rental value of property for public street lighting	25,854	35,186
13. Storage charges on inflammables stored in municipal warehouses	10,956	12,000
14. *Alcabala*	8,304	10,045
15. Tax on merchandise or produce shipped from one commune to another	26,826	34,723
16. Bridge and ferry privileges	4,663	5,372
17. License tax on vehicles	10,004	15,410
18. License tax on theaters etc.	6,230	9,589
19. License tax on cock-pits	14,628	20,213
20. Rental of municipal lands	4,436	7,016
21. Burial permits	3,428	4,820
22. Rental of municipal buildings.	5,626	6,683
23. Street cleaning privilege	318	2,800

[1] The terms commune and municipality are synonymous.

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(*Continued.*)

24. Municipal theaters	720	720
25. Road tax (poll tax)	2,455	14,250
26. Tax on entry of vessels.	886	1,300
27. Fines	3,527	7,337
28. Miscellaneous	14,307	22,983
29. Tax on imported merchandise.	136,920	138,213
30. *Impuesto locativo*	43	3,000
31. Tax on exportation of sugar	800	8,000
32. Salt market privilege	2,395	3,345
33. Meat market privilege for tables in booths (see item no. 6)	927	1,123
Total.	$749,859	$919,922

The corresponding figures for the commune of Santo Domingo, in which is located the capital city, are as follows:

COMMUNE OF SANTO DOMINGO

Sources of communal revenue	*Revenue 1916*	*Budget 1917*
1. Business licenses	$19,838	$23,500
2. Alcohol tax, production	12,521	13,000
3. Consumption tax on alcoholic beverages.	8,111	6,000
4. Registration fees, documents	14,241	15,000
5. Slaughter house privilege.	19,667	16,520
7. Produce house privilege	8,934	10,410
9. Tax on lotteries.	39,450	43,725
10. Municipal lottery (income)	15,846	16,000
12. Tax on rental value of property for public street lighting	15,720	24,000
13. Storage charges on inflammables stored in municipal warehouses	5,023	6,000
16. Bridge and ferry privileges	2,398	2,070
17. License tax on vehicles (not the new law)	3,786	7,525
18. License tax on theaters etc.	367	1,000
19. License tax on cock-pits	352	580
20. Rental of municipal lands	151	300
21. Burial permits	275	300
27. Fines	. . .	1,000
28. Miscellaneous	2,073	4,000
29. Tax on imported merchandise.	48,594	32,000
Total	$218,032	$223,535

Corresponding reports of communal expenditures are not available. The leading items are education, public works and street cleaning, police, public lighting, sanitation and administrative expenses.

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In order to shed some light on the nature of this remarkable revenue system, the writer has attempted a grouping according to the recognized forms of public revenue. This analysis is believed to represent fairly the character of the various sources.

REVENUE OF ALL COMMUNES[1]

	Revenue 1916	*Budget 1917*
Customs and octroi duties	$186,946	$208,651
Excise taxes	82,811	97,450
License and business taxes	355,494	439,759
Property taxes	25,897	38,186
Poll tax	2,455	14,250
Fees	50,396	56,560
Prices	28,026	34,746
Fines	3,527	7,337
Miscellaneous	14,307	22,983
Total	$749,859	$919,922

We have here a most remarkable picture. Nearly half the revenue of the Dominican communes comes from licenses and business taxes. Almost half the balance is from customs and octroi duties. Adding to these the excise taxes, we have more than four-fifths (86 per cent. in 1916 and 81 per cent. in 1917) of the total income coming from indirect taxes. It is probable that the miscellaneous item also consists mainly of indirect taxes. Direct taxation is represented only by the property taxes and the poll tax, both of which are of little importance. The property taxes comprise a tax on rental value of city real estate for street lighting and the insignificant *impuestos locativos*. These taxes are imposed by only a few communes and their yield is small. The poll tax is a road tax. Its administration is farcical and its yield small. Fees yield a moderate amount, about 6 per cent. of the total, collected for registration of documents, burial permits, and storage of inflammable mer-

[1] Customs and octroi duties include the following items from the previous detailed table: Nos. 11, 14, 15, 26, 29 and 31. Excise taxes include nos. 2 and 3. Licenses and business taxes include nos. 1, 5, 6, 7, 8, 9, 16, 17, 18, 19, 32 and 33. Property taxes include nos. 12 and 30. Fees include nos. 4, 13 and 21. Although a net revenue is probably obtained from these sources in all or most of the communes, they must still be classed as fees according to their nature. Prices include nos. 10, 20, 22, 23 and 24.

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handise in municipal warehouses. Rental of municipal lands nd buildings, the operation of municipal lotteries and theaters, nd the farming-out of the street-cleaning privilege give rise to small income in the form of prices. Fines and miscellaneous :ems make up the rest. The miscellaneous item is fairly large nd doubtless conceals many sources of revenue besides the hirty-three that are separately enumerated in this bewildering ollection.

The indirect taxes, which furnish the bulk of the communal evenue, deserve some further study. The largest item is the ax on imported merchandise, yielding over $135,000. This s a communal customs tariff upon goods imported into the ountry. It is entirely independent of the national customs ariff, each commune imposing its own rates. Obviously it perates to destroy the character of the national tariff system nd adds greatly to its burdens. A variety of octroi duties are nposed on goods passing from one commune to another. 'here is a communal export tax on sugar and also a system of ommunal port dues.

The excise taxes are upon the import and manufacture of lcohol and alcoholic beverages. They add to the burdens and nterfere with the efficiency of the national taxes on the same bjects.

The licenses and business taxes reach out over a great num- er of occupations, only partially disclosed in the list given bove. While there are a few instances of licenses justified by ne necessity of regulation and sanitation, the great bulk are mply taxes and constitute a deadening burden on industry.

In short, it is hardly an exaggeration to say that in the entire)ominican system of local revenue there is not a single ex- mple of sound taxation. The best that can be said of it is nat it produces a considerable revenue. The average for all ommunes is fully $1 per capita. There is little reason to oubt that, with honest and efficient management, this revenue ould be adequate for all essential needs.

It is not the purpose of this essay to suggest reforms. That natter is now in the hands of the military government, which attacking the problem with energy and commendable spirit.

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From the foregoing presentation of facts, however, certain broad conclusions are obvious. The fundamental weakness of the Dominican revenues, national and local, is the almost complete reliance on indirect taxation. The system is unjust in that a heavy burden is placed on the necessities of the poor whereas the property and income of the well-to-do go practically scot free. The system is furthermore a heavy drag upon trade and industry. The great need is a complete overhauling which shall reduce and perfect the indirect taxes and add some form of direct taxation.

There remain still to be described certain peculiar conditions which make the introduction of direct taxation an extraordinarily difficult and interesting problem. The three important forms of direct taxation are the income tax, the property tax and the inheritance tax. From what has been shown of the country's backward economic development and the poverty of the mass of the people, it is clear that there is no field for the income tax. The inheritance tax might be a useful addition to the fiscal machinery. It would not yield a large revenue, but would contribute to justice. But here we meet an obstacle in the peculiar state of the Dominican law of inheritance. The law does not compel the bringing of estates into the courts for settlement. They may be divided privately by the heirs or passed on undivided. The administration of an inheritance tax, instead of being a simple routine procedure as in our states, would be a matter of the greatest difficulty.

There remains the property tax. A tax on land and certain other forms of property is without doubt what the situation calls for. But the first step in that direction meets a stumbling block in the extraordinary condition of land titles in Santo Domingo. This is a subject that has never had the thorough study it deserves. Its maze of historical ramifications and legal technicalities is both fascinating and bewildering. The most that can be attempted in this essay is to describe the present situation in general terms.

Judged by the standards of most advanced countries, land titles are in a chaotic state. It is probably not an exaggeration to say that in the whole Dominican Republic there is not

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single perfect title to land as we understand such matters. The original grants were made in the remote past, and are shrouded in mystery. There has never been any effective system of keeping records. At various times the country has been under the rule of Spain, France, Haiti, and its own numerous republican governments. Each has done everything possible to destroy the work and obliterate the records of its predecessors. Add to this the almost continuous succession of revolutions and bandit forays, and we have a picture of the hazards of the official land-records kept in the palm huts of the village notaries. The result is that such system of recording titles as there was has broken down, and most of the records of original grants, as well as of later transfers, have been lost or destroyed, or at least have become inaccessible.

But the state of the records is by no means the worst part of the situation. A still greater difficulty lies in the prevailing system of communal lands (*terrenos comuneros*), that is, tracts of land owned in common by a number of persons, without division among the owners. These communal lands appear to have originated in the period of the Spanish government. The crown granted to certain persons large tracts whose boundaries were described more or less indefinitely by reference to natural land marks, such as the sea, a mountain range, or a river. Generally the names employed were those in common use among the natives of the island at the time. When the original grantee died it was not customary to divide the land among his heirs. The usual procedure was to call upon a notary public or other official to set a money value on the whole tract and to give each heir a title to a certain money value representing his share of the whole. These shares or titles were expressed in pesos and came to be known as *acciones* or "peso-titles." The scheme is comparable to the modern joint-stock corporation, in which each stockholder owns shares entitling him to a certain undivided interest in the whole property of the corporation.

Upon the death of an owner of peso-titles, his share would in turn be divided among his heirs without any division of the land, and so on for generation after generation. At the same time peso-titles were being bought and sold without specifying

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any particular part of the original tract as passing to the purchaser. Loss and destruction of the records of these transactions was common. There was also wholesale fraud. Titles were counterfeited, often with the aid of dishonest notaries. An owner would often sell shares representing many times his whole interest. The result of centuries of this sort of thing is a chaos of land titles that is hard to imagine. No survey of the land has ever been made. The bulk of the land is in these undivided tracts. A mass of peso-titles is scattered over the country, some genuine, some counterfeit, all subject to suspicion. The peso values expressed in these titles have of course no relation to the real value of the land. As to any given tract, there is no way of telling certainly its area, location, value, or ownership, or how many peso-titles may be outstanding against it. As to any given peso-title, there is no way of telling certainly its genuineness, its value, or the land to which it refers.

The actual occupation of land has little reference to the ownership of titles. Many owners of titles have never occupied their lands. Others have occupied and cultivated parts of their tract with scant regard to the rights of the other peso owners. Much of the land is in possession and use of squatters who have no title whatever. The abundance of fertile land has made such informal possession an easy development.

Disputes between various co-owners and between co-owners and squatters had arisen in the eighteenth century, and in 1754 a judge was appointed to examine titles and protect the legitimate owners. To certain of these there were issued *amparos reales*. These titles, however, did not extinguish the existing peso-titles, and those that exist to-day simply add to the confusion.

It is a difficult matter to decide as between the present rights of squatters and title holders. The Dominican laws make certain provision for obtaining prescriptive title by adverse possession, but their meaning is not clear. In particular their application to *terrenos comuneros* is uncertain, and they have had little effect in clearing up the tangle. Certain legal processes are also provided for obtaining a division of communal

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lands, but the difficulties and expenses are so enormous that little has been accomplished. Even such divisions as have been made under the laws have not been able to give clear title to the land.

The Dominican congress in 1912 and again in 1915 enacted laws requiring the registration of all rural lands before December 1, 1917. Titles not registered by that date, while not good for certain purposes, are still valid evidence of ownership of the land. Such a title may still be registered at any time on payment of a penalty equal to half its value. The meaning of these laws is far from clear, and the penalty for failure to register before December 1, 1917, appears to be excessive. It is not likely that these laws will be strictly enforced.

Financial reform is bound up with reform of the land system. The bringing of order out of the chaos of land titles and the introduction of a sound tax system will be a long and laborious process. The military government has before it a problem which for complexity, difficulty and interest has seldom been surpassed. But though difficult, the problem is not insoluble. The military government may be expected to attack it with the same energy and skill with which it has already conquered other difficult problems.

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HINDU POLITICAL PHILOSOPHY

I. The Method of Approach

THE brightest period of Occidental civilization is the darkest period of Oriental. During the nineteenth century and the first years of the twentieth it may almost be said that Asia was for all practical purposes lying dead. It is scarcely possible under these conditions for Western scholars to evaluate past Asian achievements at their proper worth. This condition explains, in fact, why the "comparative method" is yet in its nonage, at any rate the comparison of the claims of Orient and Occident to have contributed to the world's scientific concepts and categories or the building-up of civic and social well-being.

And yet how old are the epoch-making achievements of the modern Occident? And how many are they in number? The "pragmatic" answer lies in the history of Japan. This Asian country took virtually no more than twenty-five years (1880–1905) to exploit the whole of Western culture and defeat a great European power. Historically considered, some of these achievements are fifty years old, some seventy-five, none above a century. The steam-engine had little practical value before the third decade of the nineteenth century. It is fair to recollect the social and industrial position of Germany in the days of Goethe, the educational condition of the people of France about the time when Arthur Young was touring in that country, and the condition of the working classes and the female sex of England at the time of the Napoleonic Wars.

Strictly speaking, modern Europe and America do not date back earlier than 1870. Europe was medieval and feudal almost down to that date. The political boundaries were even then almost as flexible as in the days of Charlemagne, or of Guelphs and Ghibellines. Nationality existed only in limited degree before Mazzini and Bismarck; the dignity of labor was not recognized before Karl Marx and Louis Blanc; "popular"

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institutions were all but unknown before the first Reform Bill of England; and the right of the masses to elementary education was not really a question of practical politics in the first half of the nineteenth century. America's freedom was threatened in the second war with England, and her integrity jeopardized by the Civil War, of which also England tried to take diplomatic advantage.

Every student of political theories and institutions must remember this background of European-American life while trying to understand the civic and social achievements of the Asians. Unbiased investigators would find in Oriental history the same struggles and tribulations through which Western humanity has passed. What is required of them is: first, to practise scientific detachment from the conditions of life in which they are living to-day; second, to master the actual facts of political development and speculation in Asia; and third, to place them in the perspective of Occidental theory and practice, epoch by epoch, item by item, and area by area.

The "superior races" of the last hundred years have been misled by their fact of success to treat the whole development of Asian polity as nothing but an unchanging record of semi-savage, *i. e.*, almost unpolitical or pre-political, group-life, and the whole literature of Oriental political thought as at best but commonplace speculation pervaded by theocratic ideas. On the other hand, there is a class of Oriental scholars, among both Hindu archeologists, and leaders of Chinese revolution, who try to demonstrate the existence of every modern republican theory and institution in the teachings of Confucius and Mencius and the clan-republics and village-commonwealths of India.

Both these standpoints must be set aside as superficial. What is urged here is that it is unfair to compare the East in its worst and most backward condition with the West in its best and most prosperous condition. It is a vicious practice to try to understand Asia as the leader of humanity's progress from the servile and arrested Asia of to-day. Justice and science require that Asia and Europe should be tried in the balance "under the same conditions of temperature and pressure," *i. e.*, under conditions of absolute freedom and mutual respect.

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II. *Hindu Political Development*

The history of India for at least fifteen hundred years, from about the third decade of the fourth century B. C. down to the end of the twelfth century A. D., is the history of gradually growing and expanding political consciousness and literary as well as scientific development. The Hindu Pericleses, Caesars, Justinians, Charlemagnes and Frederic Barbarossas could easily challenge comparison with their western peers on their own terms. So far as the "rights" of citizenship, or privileges of councils or of peoples' assemblies are concerned, there was practically nothing to choose between the East and the West.

From the beginning of the thirteenth century India had to accept in part an alien faith, Islam. But never was any part of India subject to a "foreign power;" and strictly speaking, there was no Mohammedan period of Indian history. In the first place, Islam as a political factor did not interfere with the national independence of the people of India; in the second place, it was never paramount throughout the country; and in the third place, the relations between the Mohammedan states and the original Hindu states, or between the Mohammedan Empires and their Hindu citizens, or between the Hindu Empires and the new Mohammedan citizens did, at their worst, but repeat the story of the relations between the Roman Catholics and Protestants in the West. The political history of medieval India does not present greater insecurity and absence of peace than that implied by the Welsh, Irish and Scotch wars of England, the Hundred Years' War between England and France, the wars of the House of Hapsburg, the wars of the innumerable German baronies, the wars of the Italian republics, the English Civil War, the French wars of the Fronde, the meteoric brilliance of the Swedish Gustavus Adolphus and of the Polish kingdom, the expansion of Turkey at the cost of Christendom, the courting of a Moslem alliance by Christian kings against brother Christians, the annexations of Peter the Great and Frederick the Great, and the beginning of the decline and fall of the Holy Roman Empire.

It may be convenient here to tabulate the principal land-

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marks in the history of Hindu political development during over two millenniums:

1. The Maurya Empire of Chandragupta and Asoka (fourth and third centuries B. C.). The area of the present British Indian Empire has not yet reached the limits attained by this first Empire of the Hindus. The Mauryas were in diplomatic touch with Greece, Macedon, Epirus, Cyrene and Egypt.

2. The Empire of the Hindu-Tartars (Kushans) under Kanisks (A. D. 78–123). This northern and northwestern empire maintained relations of international commerce and diplomacy with the Han Emperors of China on the East and the Roman Emperors on the West.

3. The Empire of the Andhras (B. C. 200–A. D. 250). These southern emperors maintained commercial intercourse with western Asia, Rome, Egypt and China by both land and sea.

4. The Empire of the Vikramadityan Guptas (A. D. 300–600), under whom Hindu culture became a world-power by helping forward the Chinese Renaissance of the Tang period (618–905) and indirectly sponsoring the emergence of Japan as a civilized state. This period of Indian history is associated with the name of Kalidas, the Virgil of the Hindu Æneid (*Raghuvamsha*, "The House of Raghu"), and is as famous in popular tradition as that of Alexander and Charlemagne in the West.

5. The Empire of Harsavardhana in Northern India (606–47) and of Pulakesin II in the Deccan (608–55), who continued the traditions of the preceding Vikramadityan Renaissance.

6. The Empire of the Gurjara-Pratiharas at Kanauj in Upper India (816–1194).

7. The Empire of the Bengalis under the Pala and Sena Emperors (730–1200).

8. The Empire of the Chalukyas and Rastrakutas in the Deccan (down to the fourteenth century).

9. The Empire of the Cholas in Southern India (900–1300).

10. The Kingdoms of the Rajputs in the Middle West, which beginning in the ninth or tenth centuries have continued their existence till to-day.

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11. The Kingdom of Kashmir in the extreme north, which was ruled by Hindu Kings till about the middle of the fourteenth century.

12. The Kingdom of Vijayanagara in the South (fourteenth to sixteenth century).

13. The Maratha Empire founded by Shivaji (1627–80), the Frederick the Great of India, of which fragments still exist as feudatories of the British Empire.

14. The Kingdoms of the Sikhs (which beginning in the seventeenth century continue even now as feudatories of the British Empire).

In the foregoing schedule no notice has been taken of the autonomous city-sovereignties. Their existence is recorded in the earliest Hindu tradition, viz., in the "Vedas" and Epics, and "Jatakas," all previous to the fourth century B. C., the time of the first Hindu Empire. These nationalities had been republican in type, more or less aristocratic or oligarchic in character. They were thus like the city-states of ancient Greece, or the mercantile town-commonwealths of medieval Italy and the Hanseatic League.

It should be remarked that the story of political development in India is not the record of a continuous growth. In this respect also Hindu political institutions have had the fate of their European counterparts. In European history there is no continuity or unity like that which we witness in China and Japan. The state-systems of Europe have never been long-lived. Dynastic revolutions in the Middle Ages were frequent, and classical institutions were notoriously ephemeral.

The sole unifying factor in European development was the magic name of Rome and the halo of the Roman Empire. But in practical politics it led to anything but unity in Western life. It is interesting to note that Hindustan also had its Rome in Pataliputra (near modern Bankipore on the Ganges in Bihar, Eastern India), the seat of historic empires. In India too it was ever the ambition of powerful Charlemagnes to achieve the glory of the Vikramadityas. Further, during the period from the thirteenth to the eighteenth century Mohammedan Delhi occupied the place of the older Pataliputra and became a

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second Indian Rome, at once the crown of glory and bone of contention to all aspiring geniuses.

Europe has continued to be what Dante described in *The Divine Comedy*, the land of petty nationalities and of conflicting ambitions, which can but lead to institutions rising and disappearing like mushrooms. In his *De Monarchia* Dante indeed elaborated a scheme of a unified Europe managed by a Universal Empire, of which the chief was to be both Pope and Caesar; and he prophesied very often in his *Inferno*, *Purgatorio* and *Paradiso*, the advent of such a Caesar-Pope, poetically called the "Veltro," Messiah or "Yugavatara," the redeemer of Europe, who would restore the ancient glory of Rome. But Dante's dream has always remained a pious wish. Besides, the ostensible continuous existence of the so-called Holy Roman Empire until its overthrow by Napoleon should not mislead us.

In terms of population and area, ancient and medieval Hindu political development can well stand comparison with contemporary Western units. The Athens of Pericles had only twenty thousand free citizens with two hundred thousand slaves or "living tools." The population of France at the time of the Revolution was under twenty-five millions, and to-day the average of the first-class powers is between forty-five and fifty millions. Besides, there still exist a dozen lesser sovereignties which maintain themselves practically as buffer-states of powerful neighbors. India is as large in area as Europe minus Russia. If therefore in ancient and medieval times Indian history knew nearly as many rival nationalities as European, it need not be condemned as a horrible record of anarchy, bloodshed and internecine civil war, or barbaric raids of military adventurers. The world may legitimately expect within India with its three hundred and fifteen million people as many first-class powers and buffer-states and neutralized nationalities as one witnesses on a continent of the same area, or peopled by the same number of men and women. If, generally speaking, fifty million people can be the human basis of first-class nationalities in modern Europe, no student of political science should shudder if the same phenomena occur in China or India. There should not be one standard for the West and another standard for the East in political morality.

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Another feature of the Hindu states mentioned above is that they were thoroughly secular. In India religion never dominated politics. The state was always absolutely independent of the church; the church never usurped the functions of the state, nor did the priests interfere in the administration as a matter of right, temporal or spiritual. In short, Hindustan knows of no "theocracies" strictly so-called. The struggle for Caesaro-Papism among the Byzantine Emperors, the long-drawn-out conflict between the Papacy and the Empire, rivalry with regard to the custodianship of the twin keys to Heaven, the temporal sovereignty of spiritual heads, the political influence exerted by the Pope through his cardinals and legates over the internal politics of European states, are not matched in Hindu political development. Hindu monarchs with non-Hindu officers, non-Hindu princes with Hindu ministers and generals, have been the rule in India. The functions of priests have been confined to the personal religious life of the kings and the people. Their place on state-councils has been relegated to the administration of public or national festivals. And the dictates of religious scriptures have been before the mind's eye of rulers and statesmen solely as principles of moral guidance. These were more or less checks and restraints on the possible autocracy and high-handedness of the powers that be.

III. Hindu Literature on Politics

It is with reference to this *milieu* in life and institutions that Hindu political science has to be understood. Unfortunately the impression has got abroad since the days of Max Müller that the literature of the Hindus deals mainly with vague idealism, unpractical mysticism, and other-worldly absurdities—at best, metaphysical philosophy. Besides, a few stray passages from one or two ancient Hindu authors have been erroneously taken to be the watchword of all Hindu thought. Sanskrit literature is in reality the literature of every human activity from cooking, dancing, painting, cattle-breeding, gardening and grooming to erotics, thieving, burglary, warfare, navigation, and manufacture of military implements. Needless to observe, political and socio-legal treatises occupy a great deal of space.

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(a) Accounts of political life and theory are to be met with n almost every branch of Sanskrit literature. Some of the *Puranas*, all the *Smriti-shastras*, *Manu-Samhita*, *Mahabharata*, *Ramayana*, *Pancha-tantra*, *Raghu-vamsha*, *Hitopadesha*, *Dasha-kumaracharita*, as well as the treatises on warfare called *Dhanurveda*, are specially rich in the subject-matter of politics. *Yukti-kalpa-taru*, by King Bhoja, also gives an account of all requirements in a royal court. It treats of finance, taxation, expeditions, espionage, siege, diplomacy, peace, embassies and city-administration.

(b) The subject-matter of what Aristotle calls politics, and the topics of Montesquieu's *Esprit des Lois*, are, however, to be found chiefly in the Hindu *Dharma-sutras*, *Dharma-shastras*, *Smriti-shastras*, *Artha-shastras* and *Neeti-shastras*. According to tradition Shukracharyya was the last of the "great sages" who cared to set his seal on civic, economic and political studies. Hence since his time the whole literature on the subject of *neeti*, *i. e.*, morals of public and political life, has been named after him. Like the historic Aristotle of Europe, the *nom de plume* of Dr. Shukra is thus the patronymic of political science in India. In the introduction to the work attributed to his authorship Shukra states:

For the good of men Brahma the highest God had spoken that treatise which contained ten million verses. By a process of selection the essence of the *Neeti-shastra*, has been abridged by Vashistha and others like myself for the increase of prosperity of the rulers of the earth and others whose life is of short span.

(c) Up to the present only three Sanskrit works on politics as such have been rendered into English: (1) The *Artha-shastra* by Kautilya or Chanakya, finance-minister of Chandra-gupta, the founder of the Maurya Empire (fourth century B. C.); (2) The *Kamandaki-neeti*, attributed to Kamandaka, based on Kautilya's work, and believed to be a compilation of the fourth century A. D.; (3) The *Shukra-neeti* named after Shukracharyya, the date of which work has not yet been fixed definitely, but later than the first two in its present form, though containing materials which go back to the earliest times.

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Some idea of Kautilya's work can be had from a brief enumeration of the topics with which it deals: working of mines; operating of irrigation works; establishment of factories; maintenance of highways of commerce, waterways, land-routes and other facilities for communication; establishment of markets and stores; protection of the disabled, the helpless and the infirm, and also of beasts; famines; census; central and municipal government. Kautilya also elaborated a doctrine of *Mandala, i. e.*, "spheres of influence," or spheres of international activity. The doctrine of *Mandala* has been discussed also in *Kamandaki-neeti*.

Shukra-neeti deals with the following topics among other things: Duties of princes, functions of the crown-prince and other state-officials, characteristics of friends and allies, treasure general rules of statecraft, fortresses, army.

(d) The scope of political science (*Neeti Shastra*) according to Shukracharyya is as wide as human life itself. *Shukraneeti* is thus what Aristotle would call the "architectonic" or dominant science. In fact Shukra calls his science the science of all sciences. According to him, *Neeti-shastra* can dictate policies about friends, enemies and neutrals, and advise international measures. It can suggest the art of winning over the heart of the people as a branch of applied psychology, because it studies human interests and motives as well as the ways of dealing with men. Besides, it offers lessons on diplomacy and political activities in general by which one can be an able pilot of the ship of the state.

As a "synthetic" philosopher Shukra disparages those sciences which specialize in only one or two branches of human thought. Says he:

> Other sciences treat of certain specialized departments of human activity (and hence can be useful only in limited cases) whereas *Neeti shastra* is useful to all and in all cases and is the means for the preservation of human society. As *Neeti-shastra* is considered to be the spring of virtue, wealth, enjoyment and salvation, the rulers should ever carefully peruse it. . . . By knowing this they can be victorious over foes, affectionate and conciliatory towards subjects, and well up in the art of state-craft. . . . (Grammar, logic, science of rituals

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and Vedanta) treat only of the topics especially relegated to each and give truths about them only; and hence are cared for and mastered by such persons only as have need for these teachings. Are these sciences of any avail to persons following their ordinary affairs? But on the other hand, without *neeti* the stability of no man's affairs can be maintained, just as without food the physical body of men cannot be maintained. *Neeti-shastra* ministers to the desires and interests of all and hence is respected and followed by all. It is also indispensable to the prince since he is the lord of all men and things. Just as in the case of the sick persons who take unprescribed food the diseases come immediately and do not delay in manifesting themselves, so also in the case of the princes who are unschooled in the principles of *Neeti-shastra* the enemies make their appearance at once and do not delay in declaring themselves.

Shukra thus bases the claims of his science on its universal utility to man. He is a thorough-going utilitarian and humanist.

(e) It is difficult to determine (as has been done with regard to the ancient and medieval works in European political literature) which portions of these *Artha-shastras* or *Neeti-shastras* are descriptive-historical, and which are normative, utopian or idealistic; because in the present state of Indian archeology it is not yet possible in all cases to "check" the evidences of literature by reference to known facts. Details of political institutions are unknown, except as embodied in the accounts of Greek and Chinese travelers, and sometimes the greatest monarchs, ministers, and generals are known only by name. Under these circumstances it is out of the question to attempt a systematic and critical history of political theories in India.

IV. Doctrines of Hindu Political Philosophy

To modern historians of political science, single phrases, even single words of Plato and Aristotle loom unduly large. This extravagance of interpretation is not without its justification. Every age interprets its past in the light of its own experience and conscience. Classical Hellas has thus been re-born in the modern West almost as many times as there have been statesmen and philosophers who have cared to consult the ancient encyclopedias of culture. The values of every political thinker

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and theory in Europe have in this way been fixed definitely and in relation to one another, and the momentum is being accelerated with every new experience of modern times.

But no branch of Hindu thought—psychology, logic, ethics, metaphysics, religion, civics, economics, jurisprudence or politics—has yet been seriously attacked by this modern method of interpretation. It is difficult to estimate the real values of the Hindu philosophers whether individually or in relation with one another, because, as has been stated above, the archeology and chronology of India are as yet most fragmentary and open to question. Details of social and economic environment and of the actual secular life in ancient and medieval India have been coming out only recently. In any case, they are so very scrappy that the Spencerian doctrine of the "relativity" of philosophy to institutions can rarely be employed in the explanation of the epochs of Hindu culture. The difficulties of appreciating Hindu thinkers and theories can be understood if one were to imagine what would have been the value of Plato's *Republic* if only one of his Dialogues were accessible to modern scholars as the sole document of a period of, say, two hundred years, for which no other evidence of a political, economic, literary or numismatic character was available, or how much of the Renaissance in Europe would be intelligible to-day, if the sole evidence for it were More's *Utopia*. In the absence of trustworthy historical materials, Indologists, both Hindu and foreign, supposing that they were unbiased, have been led to understand or rather misunderstand a complex and varied culture-history of several thousand years from the popular verses of a few poets or the traditional sayings of one or two religious teachers.

It is not the object of this paper to give an exhaustive analysis of the more important doctrines of Hindu political philosophy.[1] But a few dicta gleaned at random from the texts would be enough to indicate that (1) if man is a "political animal," he is equally so both in the East and the West, both

[1] *Vide* the author's "Democratic Ideals and Republican Institutions in India" in the *American Political Science Review* for November, 1918.

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in ancient and modern times, in spite of the differences brought about by steam and electricity, and that (2) it is well-nigh impossible to distinguish the Hindu Aristotles, Machiavellis, Guizots and Nietzsches from their Western colleagues.

In the sixteenth century Abul Fazl, a Mohammedan minister of Akbar the Great, compiled an Imperial Gazetteer of India in Persian under the title of *Ayeen Akbari*. He devoted certain sections to Hindu laws. His summary of current political notions runs thus:

The monarch should be ambitious to extend his dominions.—No enemy is so insignificant as to be beneath his notice.—A wise prince will banish from his court all corrupt and designing men.—The King resembles a gardener, who plucks up the thorns and briers and throws them on one side, whereby he beautifies his garden, and at the same time raises a fence which preserves his ground from the intrusion of strangers.—The King detaches from the nobles their too numerous friends and dangerous dependents.—In affairs of moment it is not advisable to consult with many.[1]

In these political recipes we have the German idea of self-defense, the American notion of preparedness, the Greek theory of ostracism, and the modern practice of deporting undesirables. Those who are familiar with the "secret clauses" of all treaties, and who have watched the course of events leading to the great war of 1914 would surely echo the Hindu dictum: "In affairs of moment it is not advisable to consult with many." Even to-day, in spite of universal education, power of the press, referendum, and ministerial responsibility to the people, all nations do really "leave all God gave them in the hands of one,"

> Leave the decision over peace and war
> To King or Kaiser,
> President or Czar.

The Mohammedan synopsis of the Hindu texts goes on:

If any monarch is more powerful than himself he continually strives to sow dissension among his troops; and if he is not able to effect this,

[1] Gladwin's translation.

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prudently purchases his friendship.—The prince whose territory adjoins to his, although he may be friendly in appearance, yet ought not to be trusted; he should be always prepared to oppose any sudden attack from that quarter. With him whose country lies next beyond the last mentioned he should enter into alliance.

In these remarks also there is nothing essentially Hindu, or Oriental, or medieval or Machiavellian. The "alliances," "ententes," "conventions," and interchange of diplomatic visits in the modern world are all based on this idea.

Abul Fazl quotes among other Hindu ideas the following: "If he finds it necessary to attack his enemy, he should invade his country during the time of harvest." This was Napoleon's military method too. He wanted war to pay its own way. Military necessity may justify any measure from the desecration of the tomb of Al Mahdi in Egypt to the declaration of war by Germany against neutralized Belgium.

1. The king and the people: (a) In one passage of *Shukraneeti* about the position of the King we seem to read the ultra-radical lines of Burns:

> The rank is but the guinea's stamp,
>
> * * *
>
> Though hundreds worship at his word,
> He's but a coof for a'that.

Shukra's words are: "Does not even the dog look like a king when it has ascended a royal conveyance? Is not the King justly regarded as a dog by the poets?" The idea is that the king is great only from his position, but as an individual is no better than other mortals. In order that the king may command awe and reverence of the people, he is advised by Shukra to be attended by the retinue of officers and the regal insignia as well as paraphernalia. American individualism does not go any farther.

(b) In cases of conflict between the king's officers and subjects the king is advised to take the side of the people. He is to "dismiss the officers who are accused by one hundred men." The truth "vox populi vox dei" was thus known to the Hindus also.

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(c) According to Shukra, the king is a master only in the sense that he is to protect the people's interests, and not that he can enjoy any prerogatives or that he can treat the people in any way he likes. His position is rather that of servitude. He is the first public servant. "The ruler has been made by Brahma (the highest God) a servant of the people, getting his revenue as remuneration. His sovereignty, however, is only for protection." The Hindu king is thus only a trustee for the people.

(d) Charles I of England was guilty of having violated the people's rights of petition. In *Shukra-neeti* we have the right of direct petition by the subjects advocated several times: "The King must personally inspect every year the villages, cities and districts. He must know which subjects have been pleased and which oppressed by the staff of officers, and deliberate upon matters brought forward by the people." Shukracharya's state is thus a people's state under royal supervision. He is always with the people and for the people. A monarchy, however divine and absolute in theory, supplies, so far as these and other conditions are mentioned, practically all the advantages of self-rule and government by the many. The Shukra polity, though "despotic" in form, is democratic in spirit. At any rate its European analogues are the "enlightened despotisms" of Peter, Frederick and Joseph in the eighteenth century.

2. The people and the state: John Stuart Mill in his *Representative Government* has discussed the characteristics which make a race fit for the popular institutions of self-government. One of his criteria is that the people must have not only the 'passive" virtues of appreciating and profiting by such institutions, but must be actively interested in all that relates to public life. Shukra also is strongly of opinion that it is the duty of the people not only not to commit certain wrongs, but also to hand over to the police, or otherwise disclose to the state the existence of, the men who are in any way undesirable to the society. The whole society is thus enjoined to be an information-and-vigilance-committee and an association for public safety.

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The active co-operation of the people with the state, as contrasted with the passive obedience to the laws promulgated by it, is thus enjoined by Shukra: "You should never keep screened, or give protection to, men of wicked activities thieves, bad characters, malicious and offensive persons, as well as other wrong-doers."

3. A socialist state: An important theoretical topic of political philosophy is the limits of state-control or the sphere and functions of government. So far as pure theory is concerned, the issues between *laisser faire* and intervention have been practically settled in Mill's *Liberty;* and Sidgwick's individualistic minimum of state interference may be regarded as the last word on the rival claims between the two extremes that can be urged for the state and the individual. Shukra is no doctrinaire individualist. He has extended the scope of State functions so as to include whatever should be deemed expedient according to social needs.

Shukra says:

> You must never obstruct the tanks, wells, parks, and boundaries, or place hindrances to the use of religious houses, temples and roads, nor must you check the movements of the poor, the blind and the deformed. Without the permission of the King the following things are not to be done: Gambling, drinking, hunting, use of arms, sales and purchases of cows, elephants, horses, camels, buffalos, men, immovable property, silver, gold, jewels, intoxicants and poisons, distillation of wines, the drawing up of deeds indicating a sale, gift or loan, and medical practice.

Here we have what might be called the municipal by-laws, and regulations relating to patents, licenses and charters in modern times. Herein lie also the germs of German state socialism and modern "nationalization" schemes.

4. Ministry the real pivot of the state: The monarch is not infallible, according to Shukra.

> Even if the work be a trifling one it can be done with difficulty by only one individual. What can be performed by an unfriended person for a Kingdom that is considerable? Even the King who is proficient

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in all the sciences and a past-master in statecraft should never by himself study political interests without reference to ministers. The wise ruler should ever abide by the well-thought-out decisions of councillors, office-bearers, subjects and members attending a meeting—never by his own opinions. The monarch who follows his own will is the cause of miseries, soon gets estranged from his kingdom and alienated from his subjects.

These are some of the arguments by which Manu and Shukra seek to institute a council of expert advisers for the monarchical polity. They have considered the hypothetical case of an "all-knowing" ruler, and like the modern political philosophers have come to the conclusion on behalf of the many in almost the self-same way. The bed-rock of present-day legislation is the utilitarian creed of "the greatest happiness of the greatest number." According to modern political conscience the physical magnitude, if nothing else, is too much for one man, and hence one-man rule, however well-meaning and beneficent, is positively forbidden. The logic of Hindu politics is thus essentially modern.

As for the position of councillors, Shukra's idea is: "If the King fears their control, they are good ministers. Can there be prosperity of the Kingdom if there be ministers whom the ruler does not fear?" The Hindu ministers are thus not mere "king's men" like the ministers of England before the introduction of the cabinet system. They must have an individuality and independence of character in order that they may control the whims and caprices of the monarch and systematically govern the course of the State. The Hindu ministry is thus a positive "constitutional" check in the monarchy. Shukra does not want the ministers to be the king's private secretaries or confidential clerks.

5. Royalty a secular institution: Hindu thought does not seem ever to have recognized any "divine right of kings," just as Hindu history does not know of any theocratic state. The limitations of the king as ruler have been fully admitted, and constitutional (ministerial and popular) restraints imposed upon him. These are distinct from and in addition to the

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moral and spiritual checks that are binding upon all men as men. All Hindu philosophers are united on those limitations and checks.

This secular idea of kingship is not, however, inconsistent with the conception of the king as a "god in human form." The divine character of royalty is stated in *Manu-Samhita* and *Mahabharata*—both treatises older than *Shukra-neeti*, and is stated also by Shukra. But the divinity that hedges the king is the glory and importance of majesty or sovereignty as an abstract attribute. The sacredness of sovereignty does not carry with it, according to the Hindu theorists, the infallibility and inviolability of the holder of the sceptre. The person, property and family of the ruler are not exempt from punishment by the people. In Hindu thought the king can do wrong as any other mortal.

6. Right to revolt: The Stuarts of England would have been disappointed with Shukra's theory about the position of the king. Nor would one find in the *Manu-Samhita* and *Mahabharata* the doctrine of non-resistance preached by Hobbes in the *Leviathan*. Hindu political philosophers have definitely recognized the right of resistance to the king's autocratic rule. Deposition of rulers through revolutions is the natural outcome of their "misconduct" according to both Shukra and Manu. Says Manu:

> The King who through foolishness arbitrarily tyrannizes over his own state is very soon deprived of his kingdom and life together with his kith and kin. As the lives of living beings perish through torture of the body, so the lives of Kings also are lost through torturing the Kingdom.

This is an unequivocal enunciation of the doctrine of resistance, *i. e.*, of the rights of the people against the king. The monarchy, as conceived by Hindu political theorists, is thus "limited" (1) by the institution of the ministry, and (2) by the "fear of the people" which is the "wisdom of the lord." The people are known to have exercised their right against Vena, Nahusa and other Charles I's and James II's of Hindu

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tradition. The right "to cashier kings for misconduct" was backed up in Hindu theory by the right to "elect" the king. Gopala, the founder of the Bengali empire, owed his sovereignty to popular election (A. D. 750).

7. International ethics: The international jurists of the world and peace-propagandists of America have been recently devising ways and means to render warfare more humane and less barbarous. Resolutions have also been passed by the "concert of Europe" at Hague conferences regarding the kind of arms and ammunitions to be avoided out of consideration for human suffering. The Hindu thinkers of Manu's school have handed down a tradition of chivalrous "ideals" probably as old as the sixth century B. C. These may be useful even today in any part of the world. The following is quoted from Griffith's translation of *Manu-Samhita*:

Let the soldier, good in battle, never guilefully conceal
(Wherewithal to smite the unwary) in his staff the treacherous steel;
Let him scorn to barb his javelin—let the valiant never anoint
With fell poison-juice his arrows, never put fire upon the point.
In his car or on his war-horse, should he chance his foe to meet,
Let him smite not if he find him lighted down upon his feet. [high,
Let him spare one standing suppliant, with his closed hands raised on
[fly,
Spare him whom his long hair loosen'd blinds and hinders from to
—Spare him if he sink exhausted; spare him if for life he crave;
Spare him crying out for mercy, "Take me for I am thy slave."
Still remembering his duty, never let the soldier smite
One unarm'd, defenseless, mourning for one fallen in the fight;
Never strike the sadly wounded—never let the brave attack
One by sudden terror smitten, turning in base flight his back;
He, that flying from the battle, by his foe is slaughtered there,
All the burden of his captain's sin thereafter he shall bear.

8. Militarism: The *Ksatriyaism* or militarism of the Hindus is proverbial. All modern war-lords would recognise in the Hindu *Shukra* their own kin. The following is taken from *Shukra-neeti*:

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Even Brahmanas [the most intellectual order of people] should fight if there have been aggressions on women and priests or there has been a killing of cows [which are held inviolable by Hindu religion] * * *

The death of *Ksatriyas* (warriors) in the bed is a sin. The man who gets death with an unhurt body by excreting cough and biles and crying aloud is not a *Ksatriya*.—Death in the home except in the fight is not laudable. Cowardice is a miserable sin.—The *Ksatriya* who retreats with a bleeding body after sustaining defeat in battles and is encircled by members of the family deserves death.

People should not regret the death of the brave man who is killed at the front. The man is purged and delivered of all sins and attains heaven.

The fairies of the other world vie with one another in reaching the warrior who is killed at the front, in the hope that he be their husband.

The rascal who flies from a fight to save his life is really dead though alive, and endures the sins of the whole people.

The morality inculcated here would be called *Bushido* in Japan. This seems to be a chip from the Lycurgan creed followed in the public barracks of Sparta. Or it is a spark from the *Politics* of Heinrich von Treitschke?

BENOY KUMAR SARKAR.

NEW YORK CITY.

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THE ECONOMIC STATUS OF THE NEW YORK WHIGS

IN the social politics of America the campaign of 1840 marked the end of an era. The ruling caste of colonial days had slowly given way before the forces of democracy as represented in frontiersmen and mechanics. Manhood suffrage was now an accomplished fact in almost every state, and of late years there had developed a leveling tendency among the workingmen that menaced even the ordinary rights of property. Frances Wright had said in 1830:

> What distinguishes the present from every other struggle in which the human race has been engaged, is that the present is evidently, openly and acknowledgedly, a war of class. . . . It is the ridden people of the earth who are struggling to overthrow the "booted and spurred riders" whose legitimate title to work and starve them will no longer pass current.[1]

This dictum came, of course, from an extremist, yet it represents a theory and sentiment which gave the leaders of society much concern throughout the yeasty thirties. The leaders of the old conservative party clearly realized that they must renounce all claims to class superiority, and under the new conditions of political equality they sought power through demonstrations of American simplicity.

Mr. Webster, in his Saratoga speech in 1840, apologized profusely because the house of his nativity had not been made of logs; but he was quick to claim that honor for his elder brother and sisters. "If ever I am ashamed of it," he fervently exclaimed, "may my name and the name of my posterity be blotted from the memory of mankind!"[2] In a country where most people still made their homes in log cabins,[3]

[1] *Free Enquirer*, May 3, 1830.

[2] *Writings* (National Edition), vol. iii, p. 30.

[3] W. E. Dodd, Expansion and Conflict (N. Y., 1915), p. 208.

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such sentiments were popular. It was felt to be the blessing of America, not that all should remain log-cabin dwellers through their lives, but that anyone beginning in such humble circumstances could by dint of application become as great a man as Mr. Webster. The log-cabin, coon-skin pageantry of the campaign expressed the feeling of fraternity deepened by the confident individualism which characterized American society in the nineteenth century.[1]

Confronted with so prevalent and indigenous a sentiment, the theory of class war, advanced by Frances Wright, seemed a curious exotic phenomenon, confined to industrial cities which were then not typically American. In these days the old aristocracy surrendered its pretensions to prescriptive rights, absurd as they had long since become. Some scions of old families came down like commoners to fight their way in the political arena, while others, feeling that they stood no better at the polls than did their servants, withdrew to the secure serenities of inconspicuous but comfortable houses, filled with old mahogany, old wines, old friends, and memories of old power.

Such is the broad view which the historian must take today, though, no doubt, few saw it then. They saw in 1840 only a furious campaign, replete with striking novelty. And there was novelty enough! When old caste distinctions had been softened, and before the great immigration of the later forties, the American people were homogeneous, like-minded, and, in consequence, uncritical. They were thus susceptible to slight suggestions, which with cumulative force carried them to strange extravagances.

[1] It was an evidence of the democratization of American society that women took so prominent a part in the campaign of 1840, being present in large numbers at the rallies and sometimes the object of special attention from the orators: see T. H. Benton, Thirty Years' View, vol. ii, p. 206; A. C. Coleman, Life of John J. Crittenden (Philadelphia, 1873), vol. i, p. 127; *N. Y. Express*, May 9, 1840; Henry Clay, Works (Federal Edition), vol. viii, p. 159; A. C. Cole, Whig Party in the South (Washington, 1913), p. 61. Possibly the new education for women was making a difference. See *Albany Argus*, May 8, 13, 1828; A. W. Calhoun, Social History of the American Family (Cleveland, 1917), vol. ii, p. 188; Memoir of Frances Wright (Cincinnati, 1855); J. R. Commons and associates, History of Labor (N. Y., 1918), vol. i, pp. 354–356; F. W. Seward, Life of Seward (N. Y., 1891). vol. i, p. 388.

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The aristocracy as such no longer took a part in politics. "As they cannot occupy in public a position equivalent to what they hold in private life," observed De Tocqueville, "they abandon the former, and give themselves up to the latter; and they constitute a private society in the state, which has its own tastes and pleasures."[1] Captain Marryat, however, after visiting the United States, declared that this great country must disintegrate unless a political aristocracy were reconstituted.

> I do not mean an aristocracy of title; I mean an aristocracy of talent and power which wealth will give—an aristocracy which will lead society and purify it. How is this to be obtained in a democracy?—simply by purchase. . . . In a country like America where the suffrage is universal, the people will eventually sell their birthright. . . . I say it has been done already, for it was done at the last New York election. The democratic party was sure of success, but a large sum of money was brought into play . . . . and the Whigs carried the day.[2]

But the future of America as foreseen by Captain Marryat and the gentlemen with whom he had conversed came no nearer to the truth than that which Frances Wright had prophesied. In the middle of the nineteenth century we were not to see a ruling gentry or a war of classes. The aristocrats of birth, when unsupported by unusual wealth or talent, dropped into a respectable obscurity, while the well-to-do among them were soon inoculated with the feverish desire, common in a bounteous but undeveloped country, to accumulate more property and by this means outshine their fellows. As manufactures, railroads and finance absorbed their interest, they found the

[1] A. de Tocqueville, Democracy in America (Cambridge, 1863), vol. i, p. 228.

[2] F. Marryat, *Diary*, second series (Philadelphia, 1840), p. 156. The captain refers to the lavish expenditures by M. H. Grinnell, R. M. Blatchford, R. C. Wetmore, and other business men, who hired about 200 "floaters" from Philadelphia at $22 each in the campaign of 1838. Their business seems to have been thoroughly done. See *Rough Hewer*, Oct. 30, 1840, and G. Myers, History of Tammany Hall (N, Y., 1901), pp. 140–141. Even then the conservative party received large contributions; see H. Ketchum to O. Follett, Sept. 13, 1832, Follett Papers in *Quarterly Pub. of the Hist. and Phil. Soc. of Ohio*, vol. v, pp. 53–54; G. Myers, *op. cit.*, pp. 107–108; D. S. Alexander, Political History of the State of New York (N. Y., 1909), vol. i, p. 395; Thurlow Weed, Autobiography (Boston, 1884), pp. 448, 476–477, 503, 504.

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game too fascinating to allow them leisure to take a part in politics. They, of course, voted the Whig ticket, and ladies boasted that they could easily convert a wealthy Democrat into a Whig;[1] but they contented themselves with making the government safe for business by generous contributions to the campaign funds.

Although the mildest projects for rejuvenating all society marked the forties, there was no concerted movement of artisans against capitalists as had been loudly heralded by the Workingmen and Friends of Equal Rights.[2] The expected crisis whose frightful shadow had been cast upon the pulpit and the press, did not arrive. In the first place, many of the changes for which the workingmen had contended in their parties, were vouchsafed them by shrewd Democratic and Whig leaders, eager for their votes. The panic of 1837 had temporarily deprived many of employment, but when those nervous days were over, the agitators found that the Texas problem, the petitions of the abolitionists and their pamphlets in the mails, had fixed the attention of the public mind, in place of matters which a few years before had been engrossing. But agitation not only went unnoticed; it was unnecessary as well, for the condition of the working class steadily improved.

Despite the opposition of the eastern manufacturers, the western lands were made cheaper for the settler,[3] and railroads joining the canals or extending into the Northwest, made them day by day more easily accessible. Even distant and mysterious Oregon was opening to settlement. It was generally realized that labor had here an alternative, and before the great influx of foreigners later in the century, employers had to offer large inducements to meet the competition of the western opportunity. For a generation wages were advanced more rapidly than prices.[4] Then, too, thrown backward from the

[1] F. J. Grund, Aristocracy in America (London, 1839), vol. i, p. 221.

[2] See F. Byrdsall, Origin and History of the Loco-Foco Party (N. Y., 1842).

[3] The preëmption laws were made permanent in 1841; for a full discussion of this matter, see G. M. Stephenson, The Political History of the Public Lands from 1840 to 1860 (Boston, 1918), chap. iii.

[4] *Senate Documents*, 52d Cong., 2d Sess., Report 1394 (Report of Mr. Aldrich from Committee on Finance, 1893), pt. i, pp. 10, 14.

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West, there was the influence of that fierce individualism of the pioneer, who had created wealth from wilderness, and who knew that the same economic opportunity awaited every man or family in the east who would take like trouble. Socialism is professedly a scheme to keep comfortable subsistence always within the reach of honest toil; it is plausible only in those societies where there are many who seem permanently denied a share in property; in America with her free lands there was no such exclusion.[1]

After these reflections it will be interesting to analyze the composition of the Whig party, for example, in New York. Throughout the country they had assumed their name as resistants to "King Andrew," and, taking North and South together, this was, no doubt, their only bond of union. But in New England and the Middle States their dislike of "executive encroachment" was grounded chiefly on the fact that they were excluded from executive offices.[2] As old Elder Leland, of Cheshire, put it, "Strip a man of office and he will talk like a whig; put him into office and he will be a tory."[3] This may account for the professions of the party in New York, but it does not reveal its constituent parts.

On no question, in the noisy days of 1840, was there more recrimination than as to where the old Federalists were to be found. The Democrats, of course, pinned the black cockade of ninety-eight upon their enemies. But the great Henry Clay attempted to repel the charge that the Federalists had changed their name for that of Whigs, and instanced fellow senators who had once followed Hamilton and Adams, but who had now transferred their fealty to Jackson and Van Buren.[4] A New York congressman supported him by citations in the

[1] It may be said that the laborers bettered their condition when they ceased attempting to reconstruct society, and through their trade unions attended strictly to raising their own wages.

[2] For an explanation of the Whig party largely on this basis, see Edgar Dawson, "The Origin of the American Whig Party," *History Teachers' Magazine*, vol. ii, pp. 160–161.

[3] John Leland to G. N. Briggs, Jan. 12, 1836, Writings of the Late Elder John Leland (N. Y., 1845), p. 675.

[4] Works, vol. viii, pp. 205–206.

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House of Representatives;[1] papers printed similar lists,[2] and a favorite campaign song rehearsed the names of fifteen Democratic leaders formerly members of the discredited party.[3] Willis Hall, speaking in the assembly, referred to eighteen Federalist families in the city of New York, who were now represented in the ranks of the administration.[4] Conversely, General Root pointed to the seven survivors of the New York senators who had voted for Jeffersonian electors in 1801; six of them, he said, were Whigs in 1840.[5]

However, Hamlet's mother showed but common shrewdness when she remarked, "The lady doth protest too much, methinks." The Whigs in their diligent researches for names of Jackson Federalists, evidenced a too violent desire to allay suspicion. In this they were not successful. It was generally known that the old group, though dwindling, had largely kept together in New York and formed the core of the rechristened party in the thirties. Once, when a certain politician's orthodoxy was impugned, Greeley remonstrated, "Is it not monstrous that anybody should fear the man . . . . who is heartily supported by such Whigs as James Kent, David B. Ogden, Philip Hone, John A. King, &c., &c.?"[6] But these, whose opinions Greeley took as standard, were all old Federalists. Denials of Federalist origin were distasteful to such staunch old partisans as Colonel Stone of the *Commercial Advertiser*, for they were as useless as they were absurd.[7] The great majority of the Federalists of 1812, who had survived, were Whigs in 1840.

But this remnant could never have carried an election in New York. Most Clintonian Republicans, like Archibald McIntyre

[1] Remarks of Mr. Christopher Morgan of N. Y. . . . March 26, 1840 (N. Y., 1840).

[2] E. g., *Springfield Republican*, Sept. 29, Oct. 6, 13, Nov. 10, 1838, June 1, 1839.

[3] "When This Old Hat Was New," Log-Cabin Songbook, p. 66.

[4] Quoted in *Springfield Republican*, Feb. 10, 1838.

[5] Quoted in *New Haven Palladium*, June 1, 1840.

[6] *New York Tribune*, Nov. 3, 1846.

[7] H. Greeley to W. L. Stone, Jr., in the latter's Life of William L. Stone, p. 98; *Rough Hewer*, Aug. 13, 1840.

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and Pierre Van Cortlandt, had remained with Seward and Granger, as champions of internal improvement in state and nation. Some "People's Men" like Dr. Barstow, whom the Whigs named for lieutenant governor in 1836, had likewise stayed with those who fought the Regency. Some Democratic Anti-Masons, like John C. Spencer and John Young, who was to be made governor, formed ties with Weed and others too strong to make it easy to rejoin their former party when the blessed spirit had subsided. The Democratic leaders who had been so long in power had been unable to minister to the ambitions of all their party workers, and some disgruntled politicians like General Root, General Pitcher and Major Noah, as well as Jesse Buel, the ex-state-printer, who was chosen as the candidate for governor in the hopeless campaign of 1836, came over to the opposition out of hopelessness or spite. As men like General Porter and P. R. Livingston had developed economic interests which would be served by the American system and internal improvement, they naturally left the Democrats and joined the party of the business men. This was the kind of motive even more obvious in the case of merchants like R. C. Wetmore and Moses H. Grinnell, who appreciated the useful service of the Bank of the United States; or of the state bankers, like Tallmadge and the rest of the conservatives, who came in 1838 to see that private credit was not effectually protected by the Democratic party.

It was but natural that the Whigs should welcome these accessions as they came, and grant distinctions to their new adherents which would possibly draw others to their standard. On the electoral ticket of 1840 in New York, for example, six places were assigned apparently with this end in view.[1] Besides all these, of course, there were many other voters caught and sometimes held by argument or song, as the "Panic Whigs" of 1838 and the "Log-Cabin Whigs" of 1840.

That the solidarity of parties was maintained is, no doubt, in part to be attributed to the influence of leaders. Personalities

[1] Isaac Ogden, Gideon Lee, P. B. Porter, Pierre Van Cortlandt, James Burt, and P. R. Livingston.

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like those of Seward, Weed and Greeley are lodestones to attract the uncertain. The material and social interests of the northern counties, for example, were clearly similar. Yet in the ten years beginning in 1832, St. Lawrence and Clinton counties were steadfastly Democratic, while their intervening neighbor, Franklin, was as safely counted for the opposition. This cannot be explained unless one calls to mind that the former counties were the homes of Silas Wright and A. C. Flagg, strong members of the Regency, and the latter of the popular and influential Luther Bradish, who presided over the two houses of the legislature in succession. However, few historians would argue that personal factors were the chief cause of the party loyalties at large.

A thesis has been advanced and supported with much scholarly research, that the two great parties of our history represent respectively two kinds of property interest, personal and real, especially if the latter be encumbered.[1] If a student will cast up the sums of the assessments in the thirty-three counties regularly democratic in the times of Jackson and Van Buren, and with due reference to the population, carefully compare his figures with those he has obtained from the twenty-four Whig counties, his laborious computation will convince him that this thesis is not supported by these statistics.[2] It should be said, however, that the test has not been fair, as the interpretation is intended to apply only to the whole country broadly separated into economic sections.

But our student, by constructing state election maps, will observe how constant was the western section in its loyalty to

[1] See C. A. Beard, Economic Interpretation of the Constitution (N. Y., 1913) and Economic Origins of Jeffersonian Democracy (N. Y., 1915).

[2] In the realty assessments the counties contribute no striking parallels with the election returns. It is found that of the 59 up-state counties, approximately half show an average assessment on personal estate of $12 or more per person. According to the theory, these should be Whig counties. But investigation shows that there are 19 of them which are Democratic, and only 10 Whig. The counties where personal estate is found in smallest quantity *per capita* are, most of them, among the staunchest Whig strongholds in the west: Chautauqua, Cattaraugus, Allegany, Broome, Erie, Genesee, Cortland, Niagara and Orleans. See E. Williams, *New York Annual Register* (N. Y., 1830–1843).

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Whig principles. Here were farmers of New England stock who brought their grain and wool to the canal at places such as Buffalo, Lockport, or Rochester, consigning it to the "home market," which they believed the American system was developing in the East. Here, too, were wealthy and conservative communities like Canandaigua and Geneva, and other towns like Warsaw, Batavia, Angelica, Fredonia and Geneseo, whose citizens apparently had brought with them a loyalty to the policies of the Adams family, and who had cherished gratitude to Clinton for opening their country to world commerce. It had been the fire of Anti-Masonry which had fused these western counties into an almost solid section, but the allegiance to Weed's party was retained because the young industrial communities and the commercial farmers found Whig policy comported with their interest.

> Separate from the mass of the people [ran a Democratic address to the voters] the tories of the revolution and most of their descendants —the Hartford Convention men of the late war and most of theirs— the church and state men—the bankites and monopolists of every description—the operators in money who see in government nothing but a business transaction, more or less valuable according to the share they got of the profits, and who find more virtue in a price-current than they can in the Declaration of Independence—in fine all who stand ready booted and spurred to jump into the public saddle—and you have in the residue the Democratic party.[1]

One scarcely looks for justice from the enemy; yet it is interesting to inquire if property was, as they implied, unequally divided between the two parties.

"By whom was the general mostly surrounded?" asked the *American*, when Jackson visited New York City in 1828. "Did the oldest and most respectable inhabitants crowd around him? Did the judges of the different courts, the leading barristers, the presidents of banks, the collector and others of the government, flock toward him?" No, it answered; it was generally mechanics and not men from the better walks of life who

[1] *Albany Argus*, Extra, Sept. 14, 1834.

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shouted their applause.[1] "The merchants were generally Federalists, as were most of the lawyers," wrote Thurlow Weed of New York City after 1815.[2]

It is a very common fact [declared a chronicler of trade, looking backward from the sixties] that for thirty-four years (since 1828) very few merchants of the first class have been Democrats. The mass of large and little merchants have like a flock of sheep gathered either in the Federalist, Whig, Clay or Republican folds. The Democratic merchants could have easily been stored in a large Eighth avenue railroad car.[3]

It seems, then, that there was an economic line that corresponded with the borders of political opinion. The testimony is clear enough though perhaps too slight to warrant a definite conclusion. But there is the far more certain witness of statistics.

The circulation lists of party newspapers in New York city repay examination. In the thirties the penny press, having proved its power in London, made its appearance in the United States.[4] The decent, ponderous, respectable "six-pennies"[5] were scandalized; their readers, no doubt, shared their contempt for these "scurrilities" hawked about by newsboys. But the penny papers multiplied in previously untilled fields, where there was room for anything that was cheap, and they soon spread in circulation to reach numbers far exceeding those of the class who formed opinions on the lines of editorial leaders from the pen of Colonel Stone and Colonel Webb, Mr. King and Mr. Bryant. If men are judged according to the company they keep, an index no less nice as to their taste and

[1] Quoted in *Argus*, March 3, 1828. It is well to remember that office-holders were not necessarily partisans of the president, as yet.

[2] Autobiography, p. 55.

[3] Walter Barrett (J. A. Scoville), Old Merchants of New York City (N. Y., 1863), vol. i, p. 81.

[4] F. Hudson, History of Journalism in the United States (N. Y., 1873), pp. 416–428.

[5] These papers, which held the field practically unchallenged in 1834, were so designated from the price of the papers over the counter. The subscription by the year was $10.00; see E. Williams, *N. Y. Annual Register*, 1835, p. 129.

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thought and size of purse is found in the newspapers they buy. They reflect as well as form opinion. The circulation of the six-penny newspapers we may suppose to have been chiefly among the well-to-do, and thus by finding what they chose to read, we may infer with some fairness how this sort of people thought and voted.

According to statistics compiled for 1842,[1] the circulation of the cheap dailies had reached 62,500. It was to appeal to this larger class that Greeley's *Tribune* had been started the year before, and had now about 10,000 readers, representing, probably, the proportion of Whig strength there to be found.[2] The circulation of the "Wall Street papers" was 32,200, or less than half that reached by the other group.[3] What were the politics of those journals which were desired by this fortunate third? This is a question which presents no difficulty, since that was a time when to preach the party doctrine was the chief reason of a newspaper's existence, and when its bills were often paid by generous subventions from the party chest.[4]

The *Journal of Commerce* wished to be considered neutral and emphatically commercial,[5] and, therefore, its 7,500 may be neglected. The *Courier and Enquirer*, edited by Colonel Webb, was at this time strongly Whig, and of the most conservative wing.[6] The *Express* had been founded in 1836 by Willis Hall, who later was attorney general under Governor

[1] F. Hudson, Journalism in the United States, p. 525.

[2] *Ibid.*, and H. Greeley, Recollections of a Busy Life (N. Y., 1868), pp. 136, 137. The special campaign papers undertaken by the Whigs, such as the *Jeffersonian* (Feb. 17, 1838–Feb. 9, 1839) and the *Log Cabin* (May 27, 1840–Nov. 20, 1841), were intended to reach this class. The Democrats responded with the *Rough Hewer* (Feb. 20–Dec. 24, 1840).

[3] The merchants advertised almost exclusively in these ten-dollar papers; see W. Barrett, Old Merchants, vol. i, p. 25.

[4] F. Hudson, *op. cit.*, pp. 345, 397, 411; Memoirs of James Gordon Bennett (N. Y., 1855), (anon.) pp. 160–163, 170–172; W. L. Mackenzie, The Lives and Opinions of B. F. Butler and Jesse Hoyt (Boston, 1845), pp. 90, 93; E. E. Hale, Jr., William H. Seward (Phil., 1910), p. 97; O. Follett to J. Hoxie, Feb. 6, 1832 (Follett Correspondence).

[5] Wm. Hallock, Life of Gerard Hallock (N. Y., 1869), pp. 63–64.

[6] F. Hudson, *op. cit.*, pp. 344–362.

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Seward, and was considered as a leader of the party; the paper's circulation had lately been increased by the merging with it of the *Daily Advertiser*, which had been edited by Theodore Dwight, renowned as secretary of the Hartford Convention.[1] The *American* "belonged to the strictly aristocratic and financial circles of the metropolis;"[2] edited by Charles King, the admired ideal of Federalist gentlemen, it was, of course, consistently and firmly Whig. Of that party also was the old *Commercial Advertiser*, founded to support John Jay. Born in a New England manse, its editor, Colonel Stone, had never faltered in the political faith he there imbibed; and, distinguished for the "spicy and vigilant vindication" of these principles, he had from time to time published party papers in five different towns.[3] (He spoke sarcastically of "universal suffrage folks." "I am no Jacobin—no democrat," he said: "I hate the mob.")[4] These four Whig papers served 19,800 subscribers. The others among the journals read by New-Yorkers who took less thought of pennies, the *Evening Post* and the *Standard*, which had supported Jackson and Van Buren, could muster only 2,900 on their lists. Indeed, the latter of these two had kept its hold on life wholly by grace of subsidies from Washington. Though one may perhaps claim more significance for such deductions than is warranted, from these premises it seems fair to conclude, that of those who could afford to subscribe for the more expensive party papers, seven-eighths were Whig.[5]

[1] F. Hudson, *op. cit.*, pp. 517–520.

[2] *Ibid.*, p. 442.

[3] W. L. Stone, Jr., The Life and Writings of William Leete Stone (published with W. L. Stone, Sr., Life and Times of Red Jacket) (N. Y., 1866), pp. 9, 11, 12, 16, 18.

[4] New York to Niagara, *Buffalo Hist. Soc. Pub.*, vol. xiv, p. 240; W. L. Stone, Jr., *op. cit.*, p. 25.

[5] The preponderance of Whigs among this class of readers recalls a like condition with their Federalist predecessors. Using Hudson's Journalism in the United States, pp. 225, 226, 282, and I. Thomas's History of Printing (Worcester, 1810), vol. ii, p. 519, for data, one may conclude that three-fourths of the well-to-do subscribers in 1816 patronized the Federalist papers. See also article in "Newspapers" in Encyc. Brit. (11th ed.); article on B. Gardenier in Nat. Cyc. of Am. Biog., vol. xiii, p. 433; and American Almanac, 1835 (Boston), p. 282.

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It is interesting in passing to cite the opinion of a contemporary observer, that the papers of that day which were published on a costly and ambitious scale tended to become Whig, because of their dependence on the merchants' advertisements, a source of income more reliable than subventions from the party:

> You may always doubt a democratic editor's sincerity when his advertisements begin to increase. He is then sure of making himself agreeable to a certain portion of the commercial community, and must soon meet the proper reward of his new political faith. You may then expect to see him promoted in society and on change; and ten chances to one he will be able to settle with his creditors. After that he begins to differ on one point or another with the leading principles of the democratic party (for it is seldom that a man changes *at once* from a democrat to a Whig), until by degrees he renounces the whole doctrine as unworthy of a "gentleman and a scholar."[1]

Fortunately there can be added other evidence as to the character of parties in the state eighty years ago. Our survey according to the counties did not contribute to support the economic hypothesis, but perhaps it was because within a section like a county it is impossible to find how property was distributed. An examination of the cities of the state, ward by ward, through several years, however, will yield more interesting results; for here we may safely infer a general economic character to each small locality.

If we turn to the metropolis, we find that the first three wards, spreading northward from the Battery, and the fifteenth, in Greenwich Village, are constant in their opposition to the Democratic party throughout the dozen years before 1841,[2]

[1] F. J. Grund, Aristocracy in America, vol. ii, p. 125; and see W. Barrett, Old Merchants, vol. i, p. 25. Grund says that there are generally considerably more Whig papers than Democratic in a city, "which I take for the best possible proof that talent loves to be rewarded, and in republics, as well as monarchies, naturally serves those who are able to reward it," *op. cit.*, vol. i, p. 311.

[2] See E. Williams, *New York Annual Register* (1831–1840); O. L. Holley, New York State Register (Albany, 1843); New York *Evening Post*, Nov. 10, 1828, Nov. 12, 26, 1836; *New York Morning Courier*, Nov. 11, 1828. The first three wards had been Federalist in the War of 1812; see New York *Evening Post*, April 30,

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while occasionally the fifth and eighth are found in the same column. If we compare the wealth *per capita* in each ward in 1840, a striking parallel is observed.[1] The "aristocratic" first three wards and the fifteenth were inhabited, in general, by the richest men—and the most loyal Whigs. But lest in some wards wealth might have been very unequally distributed, it is well to seek some index as to the economic outlook of the individuals according to their occupation.

Depending on the figures of the nearest census where these data are presented we find there the previous conclusions perfectly supported;[2] the reliable Whig wards, which showed as well the largest wealth compared with population, are seen likewise to have contained the largest proportion of merchants, manufacturers and members of the learned professions. The fifth and eighth wards, the majority of whose inhabitants were

1810, and May 4, 1816. The fifteenth had not then been settled. We are informed that the character of inhabitants of the southern wards had not changed by 1840; see W. A. Pelletreau, Early New York Houses (N. Y., 1901), p. 78.

[1] The following figures are computed from the tables in D. T. Valentine's Manual of the Corporation of New York, 1841, pp. 49, 184:

WARDS	ASSESSMENT TOTAL ESTATE	POPULATION	WEALTH PER CAPITA
1st	$59,778,549	10,629	$5623
2d	16,856,412	6,406	2631
3d	17,261,110	11,581	1490
4th	10,415,555	15,770	660
5th	12,506,445	19,159	652
6th	9,997,978	17,199	580
7th	15,291,846	22,985	665
8th	13,248,758	29,093	455
9th	9,776,585	24,795	404
10th	6,857,650	29,093	235
11th	3,897,591	17,052	222
12th	12,365,350	11,678	1059
13th	4,554,054	18,516	245
14th	8,762,273	20,230	432
15th	22,783,167	17,769	1282
16th	17,919,139	22,275	804
17th	10,564,699	18,622	567

[2] These figures are taken from the census of the State of New York, 1845, as given in O. L. Holley, New York State Register, 1846, p. 109, excepting, of course, the column of percentages, which are computed:

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poor mechanics, several times presented Whig majorities. But the residents here who actually voted were in more comfortable circumstances than would at first appear; for reference to another column will disclose that here a considerable proportion of the workingmen were colored, and hence without the ballot, except for those who were possessed of property worth two hundred and fifty dollars. And the negroes who were qualified were likely for historic reasons and as clients of the aristocracy to support the Whigs.[1]

Turning to the other large cities of the state and using what statistics can be found, we discover, in general, a similar condition. Where the property was relatively large, the ward was Whig. Albany, Brooklyn, Buffalo and Troy all contribute figures to establish that wherever thirty per cent of the population were merchants, manufacturers and professional men, the vote showed more Whigs than were found in other wards. Conversely, where mechanics made their home, Democratic candidates generally were certain of election. Rochester, alone,

WARDS	COLORED PERSONS	FARMERS	MECHANICS	MERCHANTS AND MANUFACTURERS	LEARNED PROFESSIONS	PERCENTAGE OF AGGREGATE OF MERCHANTS, MANUFACTURERS AND LEARNED PROFESSIONS
1st	192	..	284	2869	354	92%
2d	275	..	463	283	60	50%
3d	530	..	994	624	165	44%
4th	190	..	1684	441	50	25%
5th	2433	8	2025	568	137	27%
6th	1073	2	1281	153	68	15%
7th	368	5	2431	751	96	23%
8th	1841	1	3161	765	134	22%
9th	367	1	2586	607	162	23%
10th	445	13	3080	499	99	16%
11th	540	13	2757	141	60	7%
12th	559	187	620	354	70	36%
13th	669	6	2045	193	42	10%
14th	1243	3	2737	289	97	12%
15th	712	3	786	635	274	54%
16th	1079	28	2968	563	181	20%
17th	397	5	2093	418	121	25%

[1] See D. R. Fox, The Negro Vote in Old New York, POLITICAL SCIENCE QUARTERLY, vol. xxxii, no. 2. pp. 252–275.

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refuses to yield support to these conclusions; but the traditions of that city were so strongly Whig, that it scarcely furnishes the evidence for our inquiry.[1]

[1] The following tables and explanations will support this statement:

ALBANY

WARDS	AVERAGE ASSESSMENT PER VOTER	AVERAGE PERCENTAGE OF WHIG VOTES FOR THREE STATE ELECTIONS	PERCENTAGE OF AGGREGATE OF MERCHANTS, MANUFACTURERS AND LEARNED PROFESSIONS	COLORED PERSONS
1st	$738	39%	2%	142
2d	1023	46%	21%	63
3d	958	48%	23%	112
4th	1656	61%	39%	71
5th	6780	57%	41%	80
6th	935	56%	38%	33
7th	880	44%	15%	7
8th	605	40%	10%	38
9th	1012	62%	30%	87
10th	1275	54%	25%	155

These figures are computed from data in Joel Munsell's Annals of Albany (2d edition, Albany, 1870), vol. ii, pp. 361–362; O. L. Holley, *New York State Register for 1843*, p. 69, for 1845, p. 69, and for 1846, p. 107; *New York Tribune*, Nov. 4, 1846. Five out of seven of the wards where the average assessment was over $900 show a Whig vote of at least 45%; in fact, all but the Second and Third are well above half. Wherever the merchants, etc., amounted to more than 30%, the ward was Whig. In the First and Tenth wards the proportion of these seems insufficient to account for the number of Whigs; but reference to the number of colored persons will explain this, as in the case of the Fifth and Eighth in New York.

BROOKLYN

WARDS	AVERAGE ASSESSMENT PER VOTER	AVERAGE PERCENTAGE OF WHIG VOTES IN FOUR STATE ELECTIONS	PERCENTAGE OF AGGREGATE OF MERCHANTS, MANUFACTURERS AND LEARNED PROFESSIONS	COLORED PERSONS
1st	$8977	66%	60%	60
2d	4554	45%	28%	134
3d	8117	69%	63%	141
4th	3191	50%	32%	450
5th	1676	25%	9%	203
6th	11107	50%	42%	96
7th	4764	44%	16%	336
8th	8291	28%	17%	56
9th	9100	64%	21%	397

These figures are computed from data in the Tax Rolls, Series 1840, mss. in the

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It seems warrantable to conclude that, after due regard for other factors, there remains an "economic interpretation" of

Office of the Deputy Receiver of Taxes, Borough of Brooklyn, Department of Finance, New York city; O. L. Holley, *N. Y. State Register for 1843*, p. 82, and for 1846, p. 107; E. Williams, *A. Y. Annual Register for 1836*, p. 95, and for 1840, p. 222; *New York Evening Post*, Nov. 4, 1836. Examination will give results similar to those from the previous tables.

BUFFALO

WARDS	PERCENTAGE OF WHIGS IN 1844	PERCENTAGE OF MERCHANTS, MANUFACTURERS AND LEARNED PROFESSIONS
1st	37%	23%
2d	60%	40%
3d	67%	34%
4th	34%	4%
5th	49%	23%

These figures are computed from data in O. L. Holley, N. Y. State Register for 1845, p. 76, and for 1846, p. 103. The election of 1844 is chosen as nearest the date of the census, 1845. Here where the ward statistics show that more than 30% were members of the specified economic class, the ward was Whig. Where the mechanics were most numerous, in the Fourth, the ward was most strongly Democratic.

ROCHESTER

WARDS	PERCENTAGE OF WHIGS IN 1846	PERCENTAGE OF MERCHANTS, MANUFACTURERS AND LEARNED PROFESSIONS
1st	53%	50%
2d	58%	27%
3d	56%	27%
4th	53%	22%
5th	47%	15%
6th	52%	13%
7th	57%	4%
8th	62%	5%
9th	46%	12%

These figures were computed from data in the *Rochester Daily Advertiser*, Nov. 5, 1846, and O. L. Holley, *N. Y. State Register for 1846*, p. 109. As stated in the text, the Whig traditions of this young city seem to have been too strong to furnish evidence. The election of 1846 is selected as the only one near to the time of the census where there was anything like a contest.

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the Whig party in New York state, as it was constituted in the early forties.

DIXON RYAN FOX.

COLUMBIA UNIVERSITY.

TROY

WARDS	PERCENTAGE OF WHIGS IN 1842	PERCENTAGE OF MERCHANTS, MANUFACTURERS AND LEARNED PROFESSIONS
1st	49%	12%
2d	55%	31%
3d	69%	29%
4th	58%	34%
5th	52%	74%
6th	61%	7%
7th	46%	1%
8th	61%	59%

These figures are computed from data in O. L. Holley, *N. Y. State Register for 1843*, p. 92, and for 1846, p. 114. The election of 1842 is selected as the only one in the decade when more than one ward went Democratic. There were four wards which had 30% of their population within the specified economic class. All these were Whig. Three wards had less than 15% in this class; the two Democratic wards were contained within this group. The Seventh, with the lowest of the class, was likewise lowest in number of Whigs, and was the only ward which went Democratic more than once during the decade. See E. Williams, *N. Y. Annual Register for 1840*, p. 229, and O. L. Holley, *N. Y. State Register for 1845*, p. 91.

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LIMITATIONS OF THE RICARDIAN THEORY OF RENT II

IN the POLITICAL SCIENCE QUARTERLY for September it was pointed out that, according to the theories existing before the introduction of railroads, there would be a centralization of wealth in the hands of the owners of agricultural lands, and that the Ricardian logic leads to increasingly high rents for landowners and to low profits for capitalists. The long struggle between these two classes had taught the capitalists to despise the political privilege and coercive gains of a landlord and militaristic government and to believe in the sufficiency of their own economic forces under free competition if the government would leave them free to trade without tariff and other restrictions. According to the economic theory of the third decade of the nineteenth century, railroads were expected to benefit all alike, landlords as well as manufacturers. But the landlords, through their control of the government at this time, had the advantage in being able to force the railroads to pay high prices for land.

The English railways were able to come into existence only after a great struggle with vested rights and established institutions. The cost of that struggle made up a large part of the original outlay for their construction. Each group of railroad promoters had to obtain the passage of a special bill through Parliament before construction could begin. The House of Lords was controlled by landowners who owned the ground over which the railways must secure a right of way. In the effort to exact as high a payment as possible for land, great opposition to railroads was developed in Parliament. The parliamentary expenses for the London and Brighton Railway amounted to £4,806 per mile;[1] for the Manchester and Birmingham, £5,190; for the Blackwell, £14,414; for the Great

[1] Francis Whishaw, The Railways of Great Britain, p. 269; Select Committee on Railways, 1839, 2nd Report, p. 30.

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Western Railway, £775; and for the London Birmingham, £662.[1] In the competition for charters the best right of way did not necessarily win. It was a form of competition in which funds and political power had greater weight than purely industrial considerations. Such power is a factor to which no weight is given in economic theories that have originated from a labor theory of costs or from an equally industrial theory of value based upon supply and demand.

The difference between the estimated average cost of land to railways of £4,000 a mile in the United Kingdom and £235 per mile in the United States represents a difference in strength of organization between the landed interests in the two countries. In the United States, land, and sometimes cash also, was granted by the national, state, and city governments for a large portion of the right of way. In the condemnation proceedings for the sale of land, the probable increase in the land values was considered by the courts in favor of the railroads. Freedom from taxation was sometimes stipulated for a period of years. In Great Britain no consideration was to be given to any possible increase in land values. The landlords, in any event, were to receive the total increase. Not only were the lands sold to the railroads to be paid for according to their money-earning capacity, but also compensation was to be made to the landlords for other than pecuniary loss. Damage to scenic effects and relatively unproductive game preserves, and interference with convenience in general was to receive a pecuniary compensation.

The building of stations involved an excessive expense to meet the exactions of mature leisure-class tastes. Railroad companies had to undergo economically unnecessary expenditure in constructing tunnels made to avoid parks, and in building ornate bridges and expensive roadways to maintain the aesthetic standards of the English ruling class. These exactions were largely absent in the United States, together with

[1] Edwin A. Pratt, Railways and Nationalization, London, 1908, p. 213; G. A. Sekon, A History of the Great Western Railway, London, Digby, Long & Co., 1895, p. 8.

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the leisure class that occasioned them. Country stations in the United States are frequently no more than sheds, effective for shelter but devoid of ornament. The expense of paying dividends upon these unnecessary initial costs has been the occasion of increased charges.[1]

The British railways have not been obliged to lower their capitalization by reorganization, as have the railways of the United States.[2] During the period of the most severe agricultural depression in England, since 1875, there was no scaling down of railway capitalization and no lowering of rates. Between 1873 and 1884 the total capital outlay upon the railways of Great Britain increased from 588⅓ to 801½ millions sterling.[3] For England this means an average increase of cost per mile of roadway from £42,533 in 1873 to £49,800 in 1884. "There is no class of property," says Mr. Jeans, "that has within recent years more largely increased in value than that of railways. Between 1870 and 1884 the net profits from railway working in the United Kingdom rose from 23¼ millions to 33¼ millions, an increase of ten millions or about forty-three per cent." The average dividend on this high capitalization did not fall below four and one-fourth per cent during this period.

On the other hand, land values depreciated in Great Britain between 1875 and 1895 fifty per cent, or nearly 834 million pounds.[4] Those with mortgaged holdings found themselves obliged to pay a higher interest than the rent would be according to the existing scale of capitalization. "As regards the changes in rents, the evidence shows that in the most depressed parts of England rents have been reduced on an average of fifty per cent, while on the very poor soil in some of the eastern and southern counties no rents can be obtained and farms

[1] Railroad charges upon which the dividends are based are not regarded as exactions according to the productive or utility theory of value. No element of exaction is conceived to enter prices. Prices are simply the resultant of industrial limitations. Railroad overcharges are conceivable, but overcharges have no place in a purely industrial theory of production and distribution.

[2] Stuart Daggett, Railway Reorganization, p. v.

[3] J. S. Jeans, Railway Problems, p. 44.

[4] Royal Commission on Agriculture, Final Report, 1897, C.-8540, p. 23.

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ELECTRONIC REPRODUCTION PROHIBITED

have been thrown on the owners' hands."[1] The landlords do not necessarily obtain interest even on the present improvements. As in New England, the buildings sometimes cost more than the present reduced capitalization.[2]

In the thirties the railroads were the complainants; before the end of the century the reverse was true. In the early period the point of view of the law emanating both from the courts and from Parliament was that the property rights of the landlords must be maintained. The high compensation paid for land as well as the large parliamentary expenses involved in securing the right of incorporation are abundant evidence that the vested interests of the landlords were safeguarded in the infancy of railroad development. Now the government is supposed to maintain the income which gives to particular railroad property its present capital value. Any effective control which would involve a lowering of the present capitalization of railway investment would be considered a violation of the property rights of the investors.[3] There is no evidence of this revolution in institutions either in the later Ricardian rent doctrine or in the theory of capital income.

The railroads brought the British Isles into competition with those lands whose ownership counted least.[4] "English land which had to support the landlords, the titheowner, the farmers, the laborer, and a large army of paupers had to compete with land where often one man was owner, farmer, and laborer with no tithe and no poor rates."[5] In the new world the labor

[1] Royal Commission on Agriculture.

[2] Francis Allston Channing, The Truth About Agricultural Depression, London, 1897, p. 7.

[3] Thomas Waghorn, Traders and Railways, p. 3: "The Legislature is confronted with the difficult problem of adjusting the respective rights of the owners and of the users of the great highways of the kingdom . . . The great courts look upon every legislative enactment regulating the rights of the parties as an encroachment on the rights of the railway companies, and as a quasi-confiscation of the shareholders' private property." In 1887 Jeans comes to a similar conclusion: With the exception of regulation in protection from accident, "the railways of this country are as free from state control as ever they have been." Railway Problems, p. 64.

[4] Final Report of Royal Commission on Agriculture, p. 53.

[5] Curtler, A Short History of English Agriculture, 1909, p. 293.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

cost of producing a bushel of wheat was the largest factor. The low prices of farm products, raised to such a large extent upon land free from monopoly rents, diminished the importance of land ownership in England. The bias of those in favor of a labor-value basis for land, as well as for capital income, was to a certain extent realized.[1]

The bias in favor of a labor or industrial concept of value found expression in the belief that railroad charges should be proportioned according to the distance and cost of carriage. To Adam Smith and James Anderson, charges would be the product of the wages for the labor of carriage for one mile and the total number of miles. On the turnpike the rates of toll had been determined by the wear upon the road. Trained to this bias, the directors of the Stockton and Darlington Railway found themselves at the very beginning of railroad development in opposition to those mine owners who demanded an export rate on coal lower than the domestic rates. Much against their will, the directors were forced to allow an export rate of one and one-half pence when they were charging four pence for domestic coal. The exception has become the rule. The mileage system of rates of the turnpikes has been replaced by a highly varied system of tapering rates.

The change in the system of transportation has brought about a revolution in institutions. The monopoly advantage of the landowners near the centers of population, as represented by Adam Smith, was possible under a system of turnpikes. Tolls and cost of carriage piled up as the mileage increased, with the result that a point prohibitive of transportation of all

[1] Benjamin Badcock, Causes of Distress of the Landed Interests, *Westminister Review*, 1883, vol. 18, p. 124: "As of old it may be expected that our gentry will return to their natural avocation and for the loss of their huge profits, stolen, not earned from their fellow subjects, may find a recompense in the profits of their own labor. It is not difficult to perceive that this must result or that all the smaller gentry will be driven to seek employment in trades or professions. It will be permitted to few to enjoy a position where profits can be earned without self-exertion. Already this is felt in most trades. Land cannot in a state of free competition be free from the same wholesome and invigorating principle. The truth of this remark is known to all who are engaged in trades and are not possessed of huge capitals; the return to capital is so small it serves only as a helpmate to the personal labor of the capitalist."

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ELECTRONIC REPRODUCTION PROHIBITED

heavy goods, such as coal and wheat, was soon reached. If the landowners could keep all their geographical advantage of location, every increase of population would add to the demand for farm produce at an increased price, that is, if the profits of middlemen did not disproportionately increase.[1] The price would need to be high enough to cover the higher freight rates of more remote lands. The more the geographical position of the near-by producer is considered in the system of railroad rates, the less the supply of products will be and the higher their price. One-fourth of early railroad rates in the United States was a relatively cheaper short haul than long haul.[2] Such a system of rates would have protected the local farm producer from outside competition, and given him a differential advantage over the more distant producer, and would have helped to maintain the local land monopolies postulated by Adam Smith and Ricardo.

By 1879 the lower rate for the long than for the short haul had taken away all geographical advantage from the New York farmer.[3] Rates were made as cheap from Chicago, Ill., as from Rochester, New York, to New York City. The best wheat land of the Genesee Valley, in New York, might just as well have been located on the Mississippi River. At this time the best lands in the eastern portion of the United States, as in England, ceased to pay more than interest on the buildings. The excess supply of grain of the Mississippi Valley, hauled on cheaper long-distance rates, went to swell the supply of England, and correspondingly to lower the price of wheat. By 1897 there resulted a great depreciation in English land values, as shown by the report of the Royal Commission on Agriculture. The American railroads might not be covering fixed charges on this grain traffic.[4] At this point appears a diverg-

[1] *Cf.* Adams, Marketing Perishable Farm Products, Columbia University Studies in History, Economics and Public Law, vol. lxii, no. 170.

[2] Ringwald, Development of Transportation System in the United States (1888), p. 111.

[3] Railroad Investigations, New York, 1879, vol. i, p. 113; vol. iii, pp. 1837-1894; McPherson, Railroad Freight Rates, pp. 165, 239, 252-3, 258, 359.

[4] Daggett, Railroad Reorganization, p. 340.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

ence from the classical theory, as has been shown by Hadley.[1] Railroads did not curtail their services because those services could be performed only below the cost of their production. As long as the freight rate covered the variable expenses and paid something toward fixed charges it was better to take the traffic.

The farmer who was both a grower and a shipper found himself outclassed by the large shipper. The small shipper in a country village received a smaller rebate than the larger shipper in the same place and the latter less than the large dealer in the city. Thus it might happen that better rates for grain and cattle could be obtained by shipping west to Rochester and then east to New York city than by shipping direct to the latter city. The largest shippers were located at competitive railroad centers and competitive railroad and water points, and thus could demand better terms than the shipper or producer in a non-competitive district. The farmer's business for the most part was located at non-competitive points. He could not move his business to the city, and thus proceed in the direction of developing big business. In England, a country of short distances, as well as in the United States, the farmer could not with equal advantage be his own shipper. It is not simply that the cost is greater for transporting small amounts; the pressure is greater on the part of the large shipper to secure an even cheaper rate than the lower unit cost for the transporting of large quantities of goods. No supply-and-demand theorist who bases prices on marginal cost would allow that there might be such a concession of special privilege, which would give an advantage to those who manage large-scale business inasmuch as the privilege does not represent a technological equivalent upon the supply side.

The agricultural districts in New York were unable to secure the establishment of a pro-rata rate, which would have been in accordance with the cost theory of rates. In 1884 the farmers were a unit in support of a bill entitled, "An Act to Secure Pro-Rata Charges on Local Freight Carried by Railroads in the

[1] Hadley, Railroad Transportation, ch. iv.

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ELECTRONIC REPRODUCTION PROHIBITED

State of New York," while the manufacturers and merchants were opposed to it. The manufacturers declared that if their special rates were withdrawn they would have to move from the state, as they would not be able to compete with manufacturers who had such concessions. The farmers complained of the depressing effect on land income and value of high local freight rates and of lower long-distance rates.[1]

The system of rebates had one effect upon capitalistic enterprise, an opposite one upon agriculture. The larger the shipment by the manufacturer the better the rates. A large shipment could be produced more cheaply. With a larger output of standardized products, more highly specialized or more automatic machinery could be used. In order to dispose of a large output, prices had to be lowered. To produce goods and find a market for them at low prices, special railroad rates had to be secured. Thus rebates became a business necessity for the time being. Co-existent with rate wars, cut-throat competition developed in manufacturing enterprises. The struggle between manufacturers to occupy the position of the favored shipper became more intense. During the time of good profits, plants of a larger capacity than the period demanded were constructed. The manufacturer sought railroad rates that would allow him to sell at his neighbor's door. The under-cutting which was prophesied by the classical school became a common practice. Thus one plant might successfully invade the market of another. Production below cost frequently resulted. Fixed charges went on in any case. It might be better to produce at full capacity so long as a little more than the variable expenses were covered. But in the case of manufacturers, there was at this time no local traffic upon which monopoly prices might be set in order to cover fixed charges. According to the expectation of the classical school, production below cost would result in the curtailment of output and in the elimination of the weaker plants. But historically this has not been the main course of events. Pools, corporations, consolidations and holding companies have been organized to control prices. The

[1] Report of New York Board of Railroad Commissioners, 1884.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

destructive and wasteful character of competition has been recognized. Consolidation and community of interests through the establishment of interlocking directorates have put an end to rate wars and price-cutting. Co-operation for the maintenance of prices has been substituted for undercutting in many lines of business, as in coal, oil, steel, sugar, beef, and the retail trade generally.

Cheaper railroad ratings, as well as rebates, have helped to build central shipping points. Special commodity rates which favor particular manufacturers, jobbers, places, or industries, and which apply generally to carload lots, have been substituted for rebates.[1] The great increase in the carload minimum has been to the disadvantage of the small local dealer and to the corresponding advantage of large-scale business.[2] The difference between the rates for 100-pound lots and carloads, whether it represents a difference in the cost of transportation or in the influence of shippers, has worked to the disadvantage of all surviving small-scale producers. As a small producer, the farmer has been disqualified in his individual capacity from remaining his own shipper. As a consumer, the individual farmer is likewise affected. Almost everything he buys comes to the local dealers in less than carload lots.[3] The special carload rates, which are more widely prevalent in the East and the Middle West, the basing-point system of rates in the South, and the Pacific Coast system of terminal rates have favored the development of local jobbing centers for the distribution of goods to the small retailers in agricultural towns. These same systems of rates have made it necessary for local buyers to collect the raw produce from the farmers in small lots and send it on in carloads to the secondary markets for consumption or reshipment. The average farmer is at the same disadvantage in marketing his own produce as the small retailer in purchasing

[1] Proposed advances in freight rates, pp. 1442, 1469, 1594, 1925, 2185, 2862, 866, 2924, 5395–5397, 5566–7, 3112; Ripley, Railroad Rates and Regulation, p. 22.

[2] Proposed advances in freight rates, pp. 678, 1194; Ripley, pp. 332–337.

[3] Proposed advances in freight rates, p. 3112.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

direct from the manufacturer, or from the largest importing centers.[1]

While the formation of the great railroad systems has for the most part made it unnecessary for railroads to secure traffic by granting rebates, yet the system of rebates survives in the present system in the relatively high rates charged for local traffic. Local traffic has to bear a disproportionate amount of the total expense of transporting goods. Farmers are generally located not at the through shipping points, but at the intermediate non-competitive points, at which rates were not forced down by rate wars or rebates. The surviving system of high local rates is a differential disadvantage to the farm-owning class—a fact which helps to explain the centralization of wealth outside of that class, contrary to Ricardian prophecy and logic. No special rate has given one farmer the ascendancy over another. There has resulted no trust in the farming industry. Where combination begins, the farmer's ownership ends. The advantage of lower rates has helped to bring about a centralization of control and of wealth in lines in which Ricardo thought that competition would be greatest and profits lowest.

The favors granted by the railways to certain buyers helped to concentrate the grain business in a few hands.[2] The railroads eventually came to own many of the elevators along their lines. The use of an elevator would often be given to an elevator corporation rent-free or at a nominal charge. In return the dealer was supposed to help create a certain amount of traffic. In addition, an elevation allowance of three-fourths of a cent a bushel was sometimes granted for the transfer of grain even in those cases in which the corporation transferred the grain for the purpose of securing the profits from cleaning, treating and mixing. The free use of elevators and elevation allowances were a discrimination against all dealers who did not

[1] Interstate Commerce Commission Report, vol. xvi, pp. 354 *et seq.*

[2] Testimony of William S. Warren, Ex-Pres. Chicago Board of Trade, in the Grain Elevator Investigation, Interstate Commerce Commission, 59th Cong., 2d Sess. 1906, Sen. Doc. 278, p. 220; *Cf.* pp. 285–6, 358–9, 365, 893–5, 896–910; W. F. Rutter, Wheat Growing in Canada, United States, and the Argentine, London, 1911, p. 181.

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ELECTRONIC REPRODUCTION PROHIBITED

possess those advantages. Such discriminations were a new form of rebate.

A rebate is "a quantity price" which is granted to large dealers. In the classic theory, according to which wealth is centralized in the hands of the landlord class, and the capitalist class is left without special advantages, there is no quantity price. Prices tend toward uniformity. This conclusion is based upon the assumption that there is an unrestrained mobility of capital, as has already been indicated. But a discriminatory or quantity price becomes itself a restriction upon the free movement of capital. A quantity price is a discrimination which gives the large dealer such an advantage as to handicap the small dealer or to put him out of business. The small dealer cannot share in such an advantage. It is a privilege granted to large dealers. The lack of such a privilege prevents a small business from becoming large. Thus, it is a differential advantage which does not disappear with competition, as was assumed by the classical school. A quantity price limits free competition. The monopoly prices provided for in economic theory, like competitive prices, are assumed to tend toward uniformity. If a monopoly price is uniform to all competitive lines of business, then it is quite feasible to consider monopoly as a separate and independent phenomenon. But if monopoly prices have a varying effect, then they become a factor in determining the character of the competition of other lines of business. The profits of some concerns which are charged a higher price may disappear so as to drive them out of business, or the profits of some lines of business which are constantly unfavorably affected, as in agriculture, may be permanently at a lower rate. The presence of a quantity price in both competitive and monopoly business is contrary to the basic assumption of classical theory that there is equality of opportunities and a tendency towards a uniform rate of profits.

The equalization of profits, which was the expectation of the early economists, would not permit of the centralization of wealth in the hands of the capitalist class. The differential profits which are based upon the possession of discriminatory privileges make possible such a centralization of wealth. That

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ELECTRONIC REPRODUCTION PROHIBITED

such discriminatory advantages may run against the bias of those who favor equality of opportunity, is not the issue here. The problem is to explain the factors which have been effective in bringing about a centralization of control and ownership of wealth in the hands of capitalists and not of the owners of agricultural lands. The tendency which the Ricardian theory was intended to show is contrary to the subsequent course of events. It therefore falls short of being a working hypothesis for the explanation of present business enterprise.

The theory of equalization of profits expresses the expectation of those optimists who believed in an industrial order. At first it was thought that free competition among individuals would eventually prevail as part of the natural order. All that government had to do was to cease granting favors and to protect the results of private enterprise. Private property in capital goods was not regarded as a privilege, but as the evidence of the reward of society for services performed. Profit is the price of management. All prices, including the wages of management of entrepreneurs, are determined by supply and demand. Wages of management measure a man's effectiveness in turning out a supply of products which are demanded by the consuming public. Profits can be high only temporarily. Their reduction will be brought about by a fall in prices as a result of the increased production of both old and new entrepreneurs. If profits vary, it is due to a difference in the industrial efficiency of entrepreneurs. If some factory owners have adopted improvements, their reduced expenses will temporarily increase their profits. Such high profits are a merited reward for efficiency. The absence of profits is a proof of inefficiency on the part of the management. But increased production will eventually force prices down and correspondingly decrease profits.

The expectation of an increase in production is based upon two assumptions: (1) that business men will find it to their interest to go after a market in order to sell more goods, and will do this independently of others and not in combination with them, working in conflict with those in the same trade and not in harmony with them; and (2) that outsiders have an

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ELECTRONIC REPRODUCTION PROHIBITED

equal opportunity to come into a new field and increase its production—that is, upon the assumption of there being sufficient mobility of capital goods through circulating capital to increase the supply of goods and to decrease prices and profits. Thus it was expected that the tendency would be for production to increase, for prices to decrease, and for profits to become low, especially in the manufacture of all goods which could be indefinitely multiplied, as for instance, wrought goods which were not thought capable of monopoly control. The quantity of land was regarded as relatively fixed so that parallel with the tendency toward low profits was a tendency toward high rents.

Economists who have been trained to an industrial bias do not give any weight to factors which are not based upon industrial efficiency.[1] From this point of view it is not rebates and other discriminatory privileges but superior managerial ability in putting goods upon the market at a low cost that develops a successful combination.[2] In the earlier relatively disorganized situation, mechanical and industrial improvements are more important—that is, improvements which affected the supply of goods and also the price received for them. In the later situation, non-industrial factors such as rebates, quantity prices, strategic prices, cutting to kill competitors, division of territory to maintain prices, interlocking directorates, community of interests between those in the same line of trade, and trust strategy generally for the organization of a given line of business, come to be more important. Such non-industrial strategic factors affect prices irrespective of supply and demand. Industrial costs do affect supply, but strategic factors do not produce a good or a service for society, though, through sabotage, they may diminish the amount of goods available for consumption.[3] Whatever adds to the amount or serviceability of the goods produced should be included among the industrial or productive processes, but all activities such as "undercut-

[1] L. D. H. Weld, Marketing of Farm Products, 1916, p. 6; Werner Sombart, The Quintessence of Capitalism, 1915.

[2] Arthur S. Dewing, Corporate Promotions and Reorganizations, 1914.

[3] *Cf.* Thorstein Veblen, The Nature of Peace, 1917, pp. 324, 340, 343.

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ELECTRONIC REPRODUCTION PROHIBITED

ting" to kill competitors, misstatement of grade or condition of goods, misquoting of a market, manipulated quotations, and wash sales, determine the distribution of wealth to the extent that they affect the size of profits received rather than the amount or serviceability of the goods produced or handled. Thus the price of management may increase or decrease without reflecting a corresponding change in the supply of goods put forth by the managers.

According to traditional theories, middlemen who own the factors of production are powerless to determine prices except as they are able to increase or decrease the supply of goods. The supply of goods is a question of industrial costs. These costs in terms of money will depend upon the relative proportion of the goods to be utilized as compared to the demand for them. Through an improvement in production, costs may be diminished, profits increased, and consequently the supply of goods put upon the market enlarged. But entrepreneurs cannot maintain prices except when they possess a monopoly. Such control can be exercised only through the power of the monopoly to control the supply. Goods once put upon the market have a value or exchange relation which is dependent upon the quantity of other goods upon the market, including money, for which they may be exchanged. The middlemen between the source of supply and the consumer are helpless to fix prices in their own interests except as they have power over the supply, and then it is only through supply. If an organization of farmers, a railroad company, or a consolidation of manufacturing companies is to obtain better prices for its goods it will be only through the power to diminish the rate of output or to improve the quality. If one organization supplants another, it is because of reduced costs. The test of survival is industrial efficiency.

According to this theory prices are the resultant of natural economic forces. Prices at the same time cannot be different at different places which are accessible to the same source of supply. At least, the difference can not be more than that of the industrial cost for transportation and other necessary expense of handling the produce between the different localities.

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ELECTRONIC REPRODUCTION PROHIBITED

Thus there is no place in the logic of the philosophy of the theorists of the natural order of supply and demand for discriminatory prices. The competitive philosophy expressed the faith of these theorists in a competitive natural order which should do away with all such phenomena. All the government had to do was to keep its hands off—*laissez faire*. If the government should take a hand, it would be in the same impotent position as speculators and monopolists. Adam Smith, better than any one else of the supply-and-demand school, has expressed the belief in the impotence of all would-be price fixers.[1]

The quantity prices which are fixed in the existing order do not vary with the industrial efficiency of either the granter or the receiver. Rebates were large or small according to the scale of business and strategic position of the shipper. The shipper who has lower freight rates can sell at a price which may force a competitor out of business. A large corporation may be able to crush out an owner of an efficient factory because the former has more dollars to lose in undercutting than the latter. Thus circulating capital does not become necessarily a means of equalizing prices and profits as assumed. Funds may be used for diametrically the opposite purpose, namely, to prevent the disappearance of excessive profits. The quantity price is a form of price-fixing; it is the arbitrary exercise of power in the interest of the owners without any necessary reference to industrial factors. Such power is the resultant of the organization of a business which finds it to its advantage to eliminate undesirable competition. If the tendency is toward discriminatory prices rather than toward uniformity of prices, toward differential prices and quasi-monopoly control rather than toward equality of opportunity and free competition between individuals, the question becomes: What is the effect of monopoly or trust methods upon agriculture as a surviving form of unorganized competitive business?

In the early development of the grain business there were many buyers. The distinction between independent and or-

[1] Wealth of Nations, vol. ii, p. 27; *cf.* F. W. Taussig, Principles of Economics, New York, 1913, vol. i, pp. 159 *et seq.*

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ELECTRONIC REPRODUCTION PROHIBITED

ganized buyers did not exist. Prices were good for the farmer. But the system of free competition became disastrous for some grain dealers. All were not on the same footing. The track buyers were a disturbing element to the owners of elevators. The former had no expense from fixed capital. They could shift from one place to another. Their action, like that of tramp steamers, was uncertain. A track buyer could purchase grain where there was no elevator, as readily as where there was one. He could disturb the prices and lessen the profit of the elevator owner. If the elevator owner raised prices above what the local buyer could pay, the latter could withdraw, and buy of farmers where the profits of the elevator concern were in excess of the cost of production. As long as these tramp buyers were allowed to do business the effective organization of grain marketing would not be possible.

In the struggle which now took place between the small and the large grain dealers, the railroads took the side of the latter. The regulation which required that all the grain must be in sight before any cars would be provided, put an end to the competition of scoop shovelers, who could make money without the labor-saving device of an elevator if the railroads would provide them with cars. Farmers could shovel grain from their wagons into the cars; but the railroads refused to give them cars. The transportation companies discriminated against the farmer in favor of the owners of elevators. Thus it became impossible for the farmer to ship to a distant market. The reason given was, that the railroads wished to encourage investment in elevators. The farmers in a neighborhood might have had several millions of dollars invested as compared with the elevator corporations' five thousand dollars. But ten million dollars scattered among many independent farmers does not have as much influence as a million dollars organized in a line elevator corporation.

The grain dealers of many states organized state associations to regulate the trade. Scoop shovelers and independent dealers who did not own elevators were not permitted to belong to an association. The members boycotted any commission house which dealt with an independent dealer or received grain direct

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ELECTRONIC REPRODUCTION PROHIBITED

from the farmer.[1] By this method the competition of irregular dealers who had not subscribed to the rules of the association, was largely eliminated. The grain dealers who owned public elevators at terminal markets could, if necessary, use their profits for storage in order to overbid and drive out any undesirable competitors who did not have the profits of storage at primary markets. Thus the period of free individualistic competition, which the Ricardian theory assumed to be permanent, was supplanted by one of organization.

If the logic which was used to indicate the effect of the introduction of the improved method of transportation be applied to this situation, we should expect that the use of the elevator would decrease the labor and cost of marketing grain. Part of the saving would go to the landowner and part to the consumer in the lower prices of grain and flour. Those who went into the elevator business first would make large profits through the saving in labor from the improved method of handling grain. The large profit would induce others to build elevators. As long as the returns continued greater than those offered in other lines, there would be inducement for others to come into the business. Those who came in later would be obliged to bid up the price of grain in order to obtain business. Thus the saving in the handling of the grain would be transferred in the first instance to the farmer and later to the landlord in increased rent. The diminished cost of production would make it possible for less fertile lands to be brought into cultivation. Then the price to the consumer would decrease until population should increase the demand. But in the situation before us, there is a divergence from the industrial conception of value. The elevator is not simply a labor-saving device. It is an income-yielder to those who control its use. To the extent that its ownership gives power to line elevator corporations for the depression of prices to the farmer, private property makes of the implement a means for the centralization of wealth out-

[1] Testimony taken by the Interstate Commerce Commission in the matter of the Relation of Common Carriers to the Grain Trade, 1906, 59th Cong., 2d Sess., Sen. Doc. 278, pp. 11–35, 44, 83–4, 648, 658, 665–676, 721, 743, 754-5, 764, 907.

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ELECTRONIC REPRODUCTION PROHIBITED

side of the farm-owning class. According to the belief of the early theorist, excessive profits would be prevented, for the inducement of large returns would encourage others to come into the business until prices should be brought to the cost of production. But the free and equal opportunities to enter a business which has been assumed did not continue to exist.

Ownership which adds to the value of the product is to be distinguished from the industrial productivity of an instrument which adds to the amount or serviceability of the product. The elevator was not simply an instrument to render a maximum of service at a minimum of labor cost, as would be the case were its machinery used simply for producing serviceable goods, according to the assumption of both the classical and marginal-utility schools; but rather a device used by the owners as a means of mixing grain to raise the grade and to increase its selling value to themselves, a process which results in depreciating its worth to the millers.[1]

To control the grain business further, dealers at terminal centers organized to share the expense of collecting and distributing information as to crops and prices, and to determine the base price to be sent out and the margin of profits to be deducted from this price, and to allot the amount of business each was to receive.[2] Grain buyers did not necessarily bid up the price of grain in order to increase business as has been assumed in the competitive theory of economics; co-operation was substituted for competition. The buyers of farm products do not necessarily find it to their interest to compete. They have a common interest in a low price; either through a "gentlemen's agreement" or through following their common interest without any formal agreement they may maintain prices at a lower level. Strategic factors are not simply potent in the formation of great systems of railroads and of trusts, but they are also prevalent in the small market of country towns, where

[1] Grain Elevator Investigations, pp. 1108–1112; Mack H. Davis, Flour and Wheat Trade in European Countries and the Levant, Special Report Department of Commerce and Labor, Sen. Doc. 149, 61st Cong., 1st Sess., pp. 55–62.

[2] Grain Elevator Investigations, pp. 31, 658, 686, 700, 707, 713, 719, 722–724, 848, 867–8, 873–6, 891–2, 904, 930, 965, 981 *et seq.*

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

price cutting may be resorted to to drive out competitors and to depress the price paid to the farmer.[1]

As a result of the depression of prices and of the disadvantage to the farmer which the organization of transportation and marketing brought about, the farmers themselves in the early eighties began to organize for the marketing of grain.[2] According to traditional theory there is no necessity for organization. Prices are simply dependent upon an efficient supply and an effective demand. Organization interferes with the assumed natural order of individual liberty to supply and demand goods.[3] The explanation of supply has been sought in the necessary industrial costs to the individual entrepreneur of putting the supply of the article in question on the market. A fall in prices would be due to a decrease in the expenses of production through an improvement in technology or to a decrease in the demand of consumers. But the fall in prices which caused farmers to organize was not due either to an improvement in industrial method or to a decrease in consumers' prices, but to the strategic position of the buyers and handlers of farm products. That is, it was not the competition of superior industrial methods of other farmers which forced some of them to organize, but the superior bargaining position of the middlemen agencies which stand between the producer and the consumer. Consumers' prices do not vary correspondingly with producers' prices. The margin between producers' prices and consumers' prices, or the amount received by the middlemen, has been increasing.[4] To reduce this margin and at the same time to realize the profits of integrating some of the processes of marketing

[1] Farmers' Market Bulletin, N. C. Agricultural Experiment Station, October, 1915.

[2] J. L. Coulter, Co-operation Among Farmers, 1911, pp. 115 *et seq.*; G. Harold Powell, Co-operation in Agriculture, 1913, pp. 81, 121 *et seq.*

[3] This was the position held by Adam Smith and by the advocates of individual liberty generally. The modern business men oppose labor organization, but demand the right to organize for themselves. The economists are equally inconsistent: they have come to admit that labor organization may be a good thing to hasten the action of the supply-and-demand forces, but they are apt to be opposed to the large-scale organizations of business as an interference with the natural order of free competition between individuals.

[4] Adams, Marketing Perishable Farm Products, 1916.

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with those of farming are among the main purposes of farmers' organizations. In organizing, farmers found the banking interest, the large elevator owners, and the railroads against them. The railroads refused to grant sites or build side-tracks to the land owned by the farmers.

> Railroad companies would have a shortage of cars during the busy season, and when the farmers' elevator company wanted to ship grain, because of satisfactory prices the railroads would find it possible to furnish cars to the elevators owned by the capitalists, but would not be able to get cars for the farmers. When cars arrived it was difficult to get them into place for loading, and just as difficult to get them hauled to the terminal points. They were often lost for two or three days on the way. It was even found to be extremely difficult to find members of the grain exchanges to look after the selling of the grain. Every possible discouragement was put in the way of the farmers' organization.[1]

The regular grain dealers would join together in bidding up the price of grain in order to break up the farmers' company. A higher price would be paid than the grain could be sold for. Thus in the grain trade as in other lines, business was done below cost, often with the result of ruining the independent, and not both of the concerns which experienced the losses. These obstructive tactics form no part of the methods of industrial efficiency which were thought to be necessary for survival according to the individualistic competitive theory. Neither the result nor the intent of such tactics is to add to or decrease the quantity of products on the market. Industrial methods do affect supply; but the non-industrial strategic methods of the railroad and elevator corporations affect primarily the distribution of wealth rather than its production.

Notwithstanding the opposition of transporting and marketing organizations, there were in 1911 nearly 1800 farmers' grain elevator companies in the United States. They handled 270,000,000 bushels of grain or about 40 per cent of the total amount shipped from the sections where the farmers' elevators

[1] Coulter, pp. 119–120; Grain Elevator Investigation, pp. 668–672, 730–731, 742, 755, 778–779.

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had been built. The price paid the farmer for grain was from two to six cents a bushel higher where there was a farmers' organization than where there was none. A line elevator company might be paying these different prices at the same time, depending upon whether there was a farmers' elevator or not. Thus with no change in the supply and demand, different prices may prevail. Supply and demand are not the only factors which determine prices; organization is a most important factor. The natural order of free competition between individuals has been supplanted by one of competition between individuals and organizations and between organizations. The railroad principle, "Charge what the traffic will bear," becomes in the hands of a line elevator company, "Pay what the traffic will bear." Where there is no near-by competition the traffic will bear a lower price.

With a few exceptions the organization of the farmers in the United States has not advanced beyond the integration of the business of the local buyer with that of the production of farm crops. The owners of agricultural lands have not achieved an integration of the intermediate processes between the production of the raw products and the manufacture and sale of the finished product, as in many other lines of business, such as steel, lumber and oil. The flour mill is no longer a means of income to the landlord, as in medieval Europe.

It has not been possible in farming to obtain as many economies from carrying on the business on a large scale as in manufacturing. On a farm a child or a man cannot run a large number of machines as in a factory. The farmer cannot use automatic machinery. He has comparatively small investment in a specialized form of fixed capital. The machinery and horses can readily be turned from cultivating and harvesting one crop to another. Economy from subdivision of labor cannot be obtained by a small-scale business like farming; a laborer may be required to do any kind of work.

There is no such necessity in farming to make certain of a large market in order to support the heavy fixed charges of highly specialized automatic machinery. One notable exception is that of the citrus growers of California and Florida who,

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because of their large fixed capital investment in orange groves, have been forced to organize the better to control their markets.[1]

The machine process makes possible the repetition of a uniform product of the same grade and quality. Thus it is that manufacturers have a uniform product to sell, the reputation of which can be increased with every sale. This reputation becomes an intangible asset. People become accustomed to ask for a product about the uniform quality of which there can be no question. All money spent in training consumers to a customary purchase of a standardized product becomes a source of profit to the corporation which controls its production. The advertising of manufactured goods pays. Trade marks develop to give distinction to all repetitions of a machine-made product. System in selling becomes possible. Large investments in advertising may develop distant markets which may become world-wide.

In a hand-to-mouth distribution of products, from handicraftsman to consumer, system or organization in selling very fittingly receives as little attention as it does in Adam Smith. Handicraft goods, like agricultural products, have peculiarities which vary with the individual craftsman. The consumers of a locality adapt their tastes to the variable characteristics of the producers of their own immediate neighborhood. But when machine-made goods habituate consumers to uniform standards, and when fixed capital investment in expensive automatic machinery cheapens large-scale production, then a system for developing and maintaining a large and regular demand becomes not only possible, but imperative. In brief the sale of unstandardized products gives the profit of determining the grade to interested middlemen and makes the cost of distribution greater through the necessity of repeated grading.

Under existing conditions farmers have been able to acquire the intangible assets of regular trade for a standardized product only in the disposal of citrus fruit, dried prunes, apricots and peaches, and to a limited degree in the case of apples and

[1] Powell, Co-operation in Agriculture.

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otatoes. Only in the marketing of citrus and dried fruits can ıe organization of the growers be said to have a commanding osition in the market at all comparable with that of the rail- oads or of the great industrial corporations. Without a ıarketing organization, a farmer is dependent upon the pro- uction of a crop for an income. Others distribute his pro- ucts and gain a profit from their sale throughout the year. 'rom the fact that his income is received mainly at one season ıere follows an increased necessity for credit at a higher rate f interest than in the case of those whose assets may be hourly r daily converted into cash.

In the matter of credit, as well as of transportation and ıarkets for his produce, the farmer is generally located at a on-competitive point. The principle of rate making is that of harging what the traffic will bear. A large business can orrow for less in the small town or in the large cities, because has a credit reputation in either place. It pays a large cor- oration with a high credit rating to keep an account in New 'ork: it saves New York exchange. Such a corporation can orrow money in New York for three and a-half per cent when ırmers have to pay in the country from five to a hundred per ent.[1] On the other hand, the credit reputation of a farmer is mited to the locality where he lives.[2] Rates of interest are west in the large cities, and higher on the average in the gricultural than in the industrial states. The smaller the own, the higher is the rate of interest. The dependence of a ırmer upon one locality for short-time credit makes it possible or his credit agencies to apply the monopoly principle: charge hat the traffic will bear. This is a differential disadvantage hich the Ricardian theorists have left out of account.

[1] Report of the Comptroller of the Currency, December, 1915; Crop Reporter, pril, 1913; *American Economic Review*, Sept., 1913, March, 1914. These con- isions, however, are largely based upon answers to a questionnaire sent to bankers different parts of the United States by the Economics Department of the University Missouri, 1912.

[2] The passage of the Federal Farm Loan Act will establish a farmer's credit rating : long-time loans in any market in the United States, and make his land-mortgage nds widely negotiable, as in Europe.

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Credit is a relatively new factor which becomes increasingly important as farm products are sold in distant markets. Capital in funds, which has been most relied upon to equalize profits, itself does not tend to receive an equal return. To the extent that the rate of return charged for the use of capital is unequal, conditions for entering a new business or enlarging an old enterprise are not equal, competition is not free, and capital does not have the natural economic mobility assumed. The Federal Reserve Banks and the Land Banks have been created to control the mobility of capital. Thus the state has become increasingly a factor in destroying the free play of economic forces assumed. What form this state direction of capital will take depends upon the future. But the increased government direction of production during the war through the control of credit, coal, railroad and water transportation in the interests of the more essential industries may show the increasing importance which some form of state or collective action will assume in the future.

The high rate of credit in the rural districts has had the opposite effect from that expected by Ricardian theorists. Capital has not moved to the rural districts in sufficient volume without state interference to lower the high rate of interest. One of the results has been that settlement of land has been restricted. The high rate of interest at the extensive margin of cultivation, no less than the degree of fertility considered by Ricardo,[1] has been one of the factors affecting the unit costs. Another result is that farmers may be forced to sell their products as soon as they are ready for market to middlemen who have cheaper credit.

[1] According to economic theory, differences in the rate of interest are explained by differences in the risk. This risk represents possible losses. Through investigation it has been found that the losses of bankers from bad loans are negligible though the rate of interest among them may be highly variable as indicated above. Risk as a factor in explaining differences in the rate of interest is therefore negligible to the extent that losses are nominal.

The difference in the price of credit was thought to cover the difference in the cost of credit extension. But if these differences do not represent losses the higher price may be a source of greater profits. The size of bank dividends is evidence that the so-called excessive profits do not necessarily disappear in the existing order, as assumed in the natural order of economic forces.

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The laws of the different states have not been favorable to the formation of co-operative organizations of farmers for pooling the sale of farm products.[1] If the stock is to be owned as ordinary corporation stock with the legal right to cast one vote to each share owned or held by proxy, nothing can prevent the organization from falling under the control of a few buyers. A special enactment of law is necessary in order to restrict the right to vote to one vote to each member, irrespective of the number of shares owned. This restriction upon the transfer of capital stock would lessen the possibility of exploiting the associations from within.

In a corporation the directors are assumed to represent the stockholders and in their official actions to conform to the interests of the latter. Every stockholder is presumed to have power in the election of directors in proportion to his stock. The management is theoretically democratic; but it develops that the person with one hundred shares does not have power corresponding with that of the director who owns or controls one hundred thousand shares. The power of the minority in a corporation is nominal. The directors as stock vendors may be making large returns when the stock is paying little or no dividend. The legal privilege of voting according to shares owned or controlled proves to be a method of centralizing wealth.

Investment in a co-operative enterprise is not primarily for returns from holding or selling stock, but for an increased income from the farms which are kept under the independent management of the individual owners. The interest of the farmers continues to be primarily in their farm investment. Their outlay for stock in a co-operative marketing agency is nominal. For this reason if the co-operative association suffers losses, while gaining ordinary business experience, the members may withdraw. A farmers' organization may thus be so loosely bound together as to be unable to gain sufficient experience to become efficient. Manufacturers have likewise found a co-operative joint sales agency not sufficiently binding to enable

[1] Powell, Co-operation in Agriculture, pp. 18–78.

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them to realize permanent economies from large-scale marketing. After repeated failures to carry out the agreements involved in such arrangements, individuals have given up their ownership of separate plants and taken stock in a corporation.[1] In some industrial pools, stock is owned according to the output of the plants which enter into the association. But when profits are to be gained mainly from the exchange of securities, the control of as many shares as possible becomes desirable. Then the ownership of independent property may be given up for stock in a corporation.[1] Whether such a move is advantageous or not will depend upon whether the owners of the independent plants become a part of the management of the resulting consolidation or holding company. The laws of the United States generally have been against all pools as organizations in restraint of trade. The same purpose, however, has been accomplished by the formation of a consolidating corporation or a holding company. Then the control may be shifted from the original manufacturers to financiers, as in the case of the International Salt Company and the United States Steel Corporation.[2] Thus the hostility of the law to pooling associations has had the effect of increasing the concentration of business management. This result is the very opposite of the purpose of the law, which is to maintain the old order of free competition.

To prevent the sale of stock to those hostile to the co-operative organization of farmers, the stock must be made either non-transferable or salable only by the consent of the organization. Membership must be made stable by a binding contract. On the other hand, the main advantage of ownership of ordinary corporation securities has come to be in their exchangeability by stock vendors or in their convertibility by bankers or other creditors. In a purely co-operative association the profits go to each member according to his contribution to the products which the association sells. A low fixed return, or none at all, may be allowed upon the stock invest-

[1] Arthur S. Dewing, Corporate Promotions and Reorganization, pp. 518 *et seq.*

[2] *Ibid.*, pp. 147, 198.

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ment. The division of profits may be according to acreage or productivity of the soil.

In a corporation the profits need not be diffused among the stockholders but often are centralized in the hands of the vendors of stock. When more profit can be made from the sale of stock than from holding it, then the corporation will be run in the interest of the vendors of its securities. The directors are the best vendors because they have the inside information to know when to buy and sell. Stock that is paying no dividend may be bought to secure a controlling interest. Management is sought to control the terms of issue of securities. Holding companies of consolidations and holding companies of holding companies are formed to increase the sphere of management of the directors beyond their own power of ownership. The directors may be also directors in the largest credit institutions. As bankers, they are in a position to reap a profit whether a receivership, a reorganization, or a promotion scheme is under way. Whether the industrial corporation is worsted or not depends upon the terms which are made by its financial directors for the exchange of its securities. No adequate data are obtainable on this most important phase of modern business organization.[1] But it seems clear that the financial directors are in a position to reap profits from the increase in the capitalization of a corporation. The profits made form a part of the price of management and of the price of credit to the corporation. These profits from traffic in securities constitute the great advantage of management or control of a corporation.

The profits from vending securities are in no wise proportioned to the time of owning or controlling the capital. The great fortunes made in this way are not explainable by competitive philosophy. Those who make them have a monopoly of control of a corporation and of knowledge as to the inside conditions which may give rise to an increased or decreased dividend and consequently to a fluctuation in the value of the stock. It is upon these fluctuations that profits from stock are

[1] *Cf.* Dewing, pp. 121, 171, 473, 492, 558.

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made. The degree of control of the few who own the controlling interest in a corporation does not necessarily equal or bear any relation to the degree of control which the corporation has over the prices of its products or services. The time element that figures so largely in an industrial concept of capital as a collection of capital goods for producing a supply of products for the consuming public is not of commensurable importance in the transfer of the ownership of securities. The length of time that is necessary to create a fluctuation in the value of securities can not be said to be the same as the time the corporation takes for the production of commodities. The fluctuations in the value of the securities of a corporation may or may not be due to a change in the supply of the commodities made by it and the demand for them. These fluctuations are more likely to be caused by the organizers of the stock market, when greater profits come to be made through the vending of securities.[1] Then instead of supply and demand being the cause of all things—of entrepreneurs' profits, rate of interest, price of producers' capital goods, of consumer's capital goods and of labor, according to classical and marginal utility theories—supply becomes a by-product of high finance, that is, a phenomenon shaped by the controlling financial interests. The increase, decrease or idleness of capital goods may affect the supply of consumption goods, but the transfer of stock ownership is a form of mobility of capital which may be the source of great profits without affecting the supply of the goods produced. Railroads and factories move just the same whether the stock market is sluggish or active—that is, as business enterprise has become less industrial, profits are less traceable to the technological causes which the Ricardian and utilitarian theorists have in mind. Corporation securities are a form of private property which has assumed importance since the days of Ricardo. It is a new factor in a new situation which helps explain the centralization of wealth contrary to his expectations.

The reason why the organization of farmers proceeds more slowly than organization in other lines of business may be sum-

[1] Pujo Money Trust Investigation, 1913.

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marized as follows: The variable unstandardized character of farm products makes the control of their sale through organization of farmers more difficult. The expenditure for telegraphic information of markets, for expert knowledge of the movement and proper diversion of railroad traffic, and for the services of expert shippers for each of the wide range of products produced within any given area is so great as to make small organizations of producers unprofitable. The "seasonal" character of farm production militates against, and increases the expense of, employing permanent managers. The capacity of agricultural land to produce a variety of crops does not cause the investment in it to be fixed capital, which would require a marketing organization for its preservation and for the maintenance of profits. The uncoördinated, scattered character of agricultural production makes the concentrated control of large tracts of land difficult. The ability to make profits more readily from agriculture through railroad organization, industrial and banking corporations, middlemen organizations and mercantile agencies makes it impossible to realize such profits through the organization of farmers. The discriminatory prices which have been granted to some farmers have not been sufficient to give one farmer large-scale control. The higher price paid large farmers makes them uninterested in organization. The dependence of small farmers in some sections for credit upon supply merchants and fertilizer and seed companies does not leave them free to join organizations for storing and more advantageous marketing of their products, since notes are made due so as to force early payment, and sale is frequently restricted to the creditors. The higher discriminatory prices charged the small farmer for supplies, credit and transportation keep him from increasing the size of his business. The organization of farmers with small capital scattered over a large area has proved difficult, and in America generally impossible; the co-operative form of organization which endeavors to eliminate all special profits to organizers discourages organization of farmers in competition with ordinary business corporations, while profits to the promoters have formed a prime incentive to the organization of the great combinations

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in business. In co-operative organizations increased contro through voting by proxy is prohibited, and the amount of stocl which can be owned is limited; while proxy voting, unrestricte stock ownership, holding companies, voting trusts and "com munity of interests" have made control of ordinary corpora tions easier and more profitable. This comparative lack o organization among farmers as buyers and sellers and amon consumers as buyers are two of the great differential advantage of all other organized business.

The Ricardian theory of rent is drawn in terms of a lan monopoly. The only differential advantages contemplated those of soil and of location, were to accrue to the landlord Such advantages were considered sufficient to centralize wealt in the hands of the owners of agricultural lands. We hav shown some of the differential disadvantages of the farm-owning class, which largely explain the causes of the fall of the lan monopoly and the centralization of wealth in more powerfu organizations of capital.

While the Ricardian theory of rent shows the character o the cleavage of interests between the agricultural land-owning and manufacturing classes at the beginning of the nineteenth century, its limitations become increasingly apparent as late economists use it to interpret conditions which have changed contrary to the expectation of Ricardo. The struggle between the owners of agricultural land and of other forms of capital has brought about a result the reverse of what Ricardo contemplated. We have questioned the fitness of the assumptions underlying his competitive philosophy of prices and of distribution of wealth as applied to later times. If great technological changes had not taken place, wealth might have continued to centralize in the owners of agricultural lands. We are not, however, primarily questioning Ricardo's logic; rather we wish to show that he could not be expected to explain conditions which he could by no power of prescience forecast. A new theory is needed to explain the centralization of wealth in the hands of others than the owners of agricultural lands.

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THE CHANGING LAW OF FOREIGN CORPORATIONS[1]

THAT "legal spook" known as the corporate entity has caused a deal of trouble in the law. Human beings vested by the state with certain powers and immunities become a conceptual unity, unknown to zoölogists or even to theologians, yet "in contemplation of law" a "person" distinct from the persons who helped the state to give it birth. This person does business through agents, as high-class bipeds do. It commits crimes and torts, it gives to the Red Cross and the Y. M. C. A., it goes into bankruptcy, and on occasion it may die. But its faculties are only those with which the state its creator has endowed it. It never attains to an age of majority. It is always tied to apron strings. However far it may seem to wander from its native heath, in legal contemplation it never leaves home.

This at least was the legal contemplation of Chief Justice Taney in the famous case of Bank of Augusta *v.* Earle.[2] A corporation, he said, "must dwell in the place of its creation, and cannot migrate to another sovereignty." And for a reason he gave: "It exists only in contemplation of law, and by force of the law; and where that law ceases to operate, and is no longer obligatory, the corporation can have no existence." This would lead one to infer that a corporation outside the state of its origin could neither buy nor sell, give nor receive promises, sue nor be sued. But the decision in Bank of Augusta *v.* Earle was that a Georgia banking corporation could buy a bill of exchange in Alabama through its Alabama agents, unless Alabama forbade, and that so long as Alabama was silent it would be presumed to consent. Thus the corporation was allowed to act in Alabama through the same and only means that it could act in Georgia, i. e., through agents. It might, therefore, as easily have been said that a corporation has no existence anywhere, except *in nubibus* or some similar abode of legal contemplation, but that nevertheless it may act through agents either in the state of its creation or elsewhere. To debate the habitat of a corporation, when the corporation is only an idea, seems as superfluous as arguing about the number of angels that can dance

[1] The Position of Foreign Corporations in American Constitutional Law. By Gerard Carl Henderson. Cambridge, Harvard University Press, 1918.—xix, 199 pp.

[2] (1839) 13 Pet. 519.

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on the point of a needle. What counts is how human beings can act in the name of the idea, and what will be done to human beings and to property in that name.

These are important matters to settle, and the courts have labored long and painfully to settle them. The problems are eminently practical rather than philosophical ones, and their solution should be dictated by judgments founded on practical considerations. Such a metaphysic as Taney's could never be trusted to do the job alone, and it has not been accorded any such exclusive rôle. Nevertheless it has played an important part in the process. It has delayed wise answers to various questions, and it has given excuse for more metaphysics to cure or counteract the evils it has threatened. Fiction has been added to fiction in laying stepping stones on the paths to realism. Not all the paths have yet reached that commendable goal, but in recent years the advance has been rapid. The law of foreign corporations is today in a state appreciably better than that of a decade or so ago.

In the United States the position of foreign corporations depends in large part upon interpretations of the federal Constitution. A state may give a larger welcome to corporations of a sister state or of a foreign sovereignty than the federal Constitution requires, but it cannot fall short of the hospitality and courtesy demanded by that instrument. Any restrictions or burdens that state courts may sanction on the basis of their theories of private international law, or what is more commonly called conflict of laws, are liable to be upset by the Supreme Court of the United States. The Fourteenth Amendment through its due-process clause protects foreign corporations from unwarranted disabilities or impositions, and the commerce clause is an ever present help in time of trouble to all whose business is of a character to bring them under its aegis. Now and then foreign corporations receive aid and comfort from the full-faith-and-credit clause, the obligation-of-contracts clause and the provision that states shall not deny to persons within the jurisdiction the equal protection of the laws. The questions raised under these various clauses must all be regarded as questions of constitutional law, although many of them depend for their answers, not upon any literary interpretation of the Constitution, but upon conceptions of the nature of a corporation and upon theories of conflict of laws as to the status of corporations outside the state of their domicile. The presence of the constitutional issue enables the Supreme Court to apply its own theories of conflict of laws in place of those preferred by the courts of the states whenever the latter are resisted as too illiberal.

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Many of the problems presented are as technical as any with which courts have to deal. Their solution, however, is as much a matter of interest to the economist and the student of government as to the practicing lawyer or the scholarly jurist. Owing to the number of corporations whose activities transcend the limits of a single state, the extent to which each state may exclude them or impose harsh terms as the price of admission raises issues vital to the conduct of the business life of the country. The settlement of these issues affords concrete illustrations of the nature of our federal system of government. No adequate view of the position of a state in the United States can be gained from the mere perusal of the pertinent clauses of the Constitution. Only from a full knowledge of the details of their application can one comprehend to what degree we are a nation and to what degree a loose league of independent communities. An examination of the power of a state over corporations created by a sister state is a necessary part of any comprehensive study of our American form of federalism.

I

Such an examination is embodied in Mr. Henderson's study of *The Position of Foreign Corporations in American Constitutional Law*.[1] The sub-title calls the work "a contribution to the history and theory of juristic persons in Anglo-American law." The author necessarily has much to do with theory, for the courts proceed along theoretical lines. But Mr. Henderson cares little for theory for its own sake. He is more interested in what is actually done in its name. He looks behind the theory to find the political and economic motives that have produced it. When theory and fact disagree, he prefers truth to fiction. When logic and sense conflict, he cleaves to sense. And he shows that in the long run the Supreme Court has done the same. For example, in discussing the commerce clause he tells us:

> Primarily, the effect of the commerce clause has been to place on the Supreme Court the duty of balancing and adjusting national and local interests . . . . From the nature of the problem no logical delimitation is possible . . . . Hence formulas and doctrines have been avoided; the Supreme Court has developed a technique and a method of approach rather than a set of principles. In so doing it has exercised functions which, it must be admitted, are often more nearly legislative than judicial; yet this is a difficulty inherent in the nature of the problem [page 117].

[1] See note 1, p. 549.

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And by way of reinforcement Mr. Henderson quotes a masterly presentation of the same position in Webster's argument in Bank of Augusta *v.* Earle :

> We have no second Laplace, and we never shall have, with his Méchanique Politique, able to define and describe the orbit of each sphere of our political system with such exact mathematical precision. There is no such thing as arranging these governments of ours by the laws of gravitation, so that they will be sure to go on forever without impinging [*Ibid.*].

But all too infrequently have any of the judges of the Supreme Court recognized the nature of their task so clearly as Webster and Mr. Henderson have seen it. The judicial umpiring of the federal system has usually assumed the existence of fixed and definite eternal principles, even when the court has been palpably inventing rules where none existed or changing old rules when they failed to be justified by their works. Mr. Henderson seems over-optimistic when he says that "the theory that a system of law is evolved in the brain of a jurist by the application of pure reason to philosophic first principles no longer needs to be combatted". (page 7). He must have been singularly fortunate in his associations and unfailingly heterodox in his reading. A straw vote at the annual meeting of the American Bar Association might sadly disillusion him. For men reverently chant the philosophy they have inherited, long after they have learned to escape from its inconveniences. The disapproval which the so-called sociological jurisprudence has called forth from those who did not understand it is sufficient evidence that Mr. Henderson's approach to his subject will meet with far from universal acceptation.

This approach he states in his introductory chapter as follows :

> It is now recognized that most rules of law represent a rough compromise between those economic and social needs of the present which are able to make themselves felt, and the formulas and doctrines of the past, a compromise constantly being worked over and readjusted, all the while striving towards logical consistency merely because inconsistency means litigation and waste of effort. This incessant working over of old law into new is taking place as much in constitutional law as in private law. Indeed, general phrases embodied in a constitution are often little more than mandates for judicial law making. As raw material for this law making, judges must use the social institutions and concrete legal relations with which they are familiar. The dynamic element in the development of a principle of constitutional law is therefore generally to be found in a changing economic background. New economic phenomena, railroads, industrial

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combinations, the emergence of hitherto disregarded social classes, determine its growth. They must be taken into account if the study of constitutional law is to be more than fine-spun theory [pages 7–8].

Undoubtedly one reason why this analysis of the behavior of courts often provokes hostility is that it lends sanction to the departure from established doctrines that satisfy and safeguard what are known as vested interests. In the struggles between those who direct the processes of production and distribution and those who tend machines, time-honored formulations of the preference for individualism and *laissez faire* favor the interests of one group to the resulting disappointment of the hopes of the other. And a doctrine that supports cherished possessions or position is pleasant and readily ascribed to the abiding nature of the universe which courts must inevitably perceive and respect. Change is unhallowed if it is unprofitable. The struggle for realism in the law has aroused most attention when it was associated with the phenomenon that Mr. Henderson calls "the emergence of hitherto disregarded social classes." When part and parcel of this process of readjustment, the effort to substitute fact for fancy has widely been regarded in a spirit which lacks something of scientific objectivity.

The jurisprudence of conceptions has also been nourished by the indolence and incapacity of man. Doctrine is so much lovelier and more tractable than facts can ever hope to be. Good logic is so much easier to practice than good sense. The passion to have things settled, which has cherished a clock-work conception of the universe, affectionately attaches itself to similar mechanical views of the law. Unless law is eternal, how is it to be saved from every gust of doctrine that human caprice may blow? Shall we not rather bear those ills we have than fly to others that we know not of? And so sociological jurisprudence, or the attitude that traces the development of the law as an ever-continuing process of adjustment to changing conditions and seeks to accelerate the pace, has to struggle against timidity, laziness and mediocrity as well as against intrenched interests.

The intrenched interests, however, present no formidable obstacle to the cordial reception of a realistic analysis of the problem of state power over foreign corporations. The conceptualist notion that a foreign corporation is an Ishmaelite is not likely to be invested with a perpetual sanctity by those who have most piously worshipped conceptualism when it thwarted collective bargaining or exalted freedom to work long hours in bake-shops. Mr. Henderson may therefore expect

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"sound" lawyers to approve his methodology in the field he cultivates, though they ridicule the same technique when applied to situations where their knowledge is more meager and their sympathies less awakened by the facts. Whether his book will persuade those who have hitherto sat in the seat of the scornful that what is sauce for the goose is sauce for the gander is of course another question. Some, it is to be hoped, will learn the lesson which he offers for handling problems much more vital than those with which he deals.

II

Mr. Henderson pictures the conflict over the powers and immunities of foreign corporations as a struggle between two theories, each of which arises from the facts of the period in which it holds most sway. The restrictive theory was adopted when corporations were anomalies, when they were likely to be monopolies or to wield some part of governmental power (pages 10–35). It "tends to emphasize the extraordinary character of the privileges with which the members of a corporation are endowed, and the high nature of the act of sovereignty by which their corporate franchise is conceded" (page 1). Its "economic substratum may be said to be the jealousy of local interests, the fear of world competition" (*Ibid.*). The liberal theory, on the other hand, "looks upon a corporation rather as a normal business unit, and its legal personality as no more than a convenient mechanism of commerce and industry" (*Ibid.*). Its "material basis is the growing internationalism of business, of trade, of investment" (*Ibid.*).

The liberal theory belongs still to the future. The Supreme Court is not yet formally committed to it. "But in the past decade, in a striking series of decisions, one element after another of the restrictive theory has been sacrificed, and one tenet after another of the liberal theory adopted. The final synthesis has not yet been made, but it does not seem far away" (page 3). The court has not yet denied the power of a state to exclude or eject a foreign corporation from local business within its borders. But it no longer accepts to the full the old notion that the power to exclude carries with it an absolute power "to impose such conditions upon permitting the corporation to do business within its limits as it may judge expedient."[1] The pressure of facts has driven salients into the old positions, but it has not wholly reduced them nor co-ordinated the advances made. It has spoiled the

[1] Mr. Justice Field in Horn Silver Mining Co. *v.* New York, (1892) 143 U. S. 305, 315.

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"certainty and logical completeness" of "the traditional theory" (page 7), but has set no new consistency in its stead. It has rejected conclusions without denying the premises on which they were based.

One reason why the premises may seem to remain still intact is doubtless that the court has not been called upon to pass explicit judgment upon them. No state seems inclined unreservedly to exclude any foreign corporation, except those engaged in some business of a special and unusual character, like banking. Of such business the Supreme Court has said through Mr. Justice Holmes:

> We cannot say that the public interests to which we have adverted, and others, are not sufficient to warrant the state in taking the whole business of banking under its control. On the contrary, we are of opinion that it may go on from regulation to prohibition except upon such conditions as it may prescribe.[1]

Thus any restrictions on foreign corporations seeking to engage in banking within a state may be justified by the character of the banking business without the aid of any theory of absolute power over corporations of a sister state.

The same may be said of foreign insurance companies. More and more insurance is coming to be regarded as a governmental function. It is significant that nearly all of the cases which have relied on the restrictive theory in its most drastic form have been concerned with corporations engaged in insurance, from Paul *v.* Virginia[2] in 1868 to Security Mutual Life Insurance Co. *v.* Prewitt[3] in 1906. These cases have had to do, not with absolute exclusion, but with discriminatory burdens or with exclusion for specific named reasons. Where the reason was that the corporation had removed a case to the federal courts, the judicial sanction of the expulsion could only with great difficulty be based on the character of the business which the corporation was conducting. But, as will be pointed out later, it is probable that these cases are no longer law. And the discriminatory burdens may rest on special grounds. As Mr. Henderson points out in discussing Paul *v.* Virginia:

> By providing a fund within the state to which suitors could have recourse, it sought to counteract the circumstance that corporations whose main business was conducted out of the state could not be held up to their obliga-

[1] Noble State Bank *v.* Haskell, (1911) 219 U. S. 104, 113.

[2] (1868) 8 Wall. 186.

[3] (1906) 202 U. S. 246.

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tions as easily as domestic concerns. On this ground the law might have been sustained, and it was unnecessary to concede the unrestrained power of a state to discriminate for the mere joy of discriminating [pages 105–106].

So, too, the decision sustaining a discriminatory license tax on all foreign corporations which did not invest and use their capital within the state[1] may be regarded as merely sanctioning a special form of business tax on corporations that profited from their enterprise within the state, but escaped from the general property tax. And no occult theory is necessary to support a case "upholding the revocation of a foreign corporation's right to do business in the state on account of violations of the state anti-trust laws" (page 110).[2] The general police power may sanction National Council *v.* State Council[3] which sustained the grant to a domestic corporation of an exclusive right to charter branches of a fraternal and religious order within the state. Wherever, indeed, the jurisdiction of the federal courts has not been menaced, and foreign corporations have been excluded or subjected to formally heavier taxation than domestic corporations, and the state action has been approved on the ground of the complete subjection of foreign corporations to the will of the state, the same result might usually have been attained on other lines of thought. "Where the fact of non-residence itself is one of the relevant factors in a legislative problem, clearly the state can meet the situation by a proper classification" (page 105).

Nevertheless the cases sanctioning the various exactions that states have imposed on foreign corporations have not been based on any of these narrow grounds, but upon the broader basis of the restrictive theory. Mr. Henderson states the matter accurately when he says:

> Until 1906, therefore, it was clearly the doctrine of the Supreme Court that a state might decline to admit a foreign corporation arbitrarily or even from a motive contrary to the general purposes of the Constitution; that it might admit it on conditions which result in burdensome discriminations between it and domestic corporations, and even between corporations of other states; and that it might admit it on one set of conditions, and then without cause impose another and more burdensome set of conditions. The state's attitude toward these "bodies politic" established under foreign law was, in the language of Mr. Justice Peckham, one of those "govern-

[1] Pembinia Mining Co. *v.* Pennsylvania, (1888) 125 U. S. 181.

[2] Waters-Pierce Oil Co. *v.* Texas, (1900) 177 U. S. 28.

[3] (1906) 203 U. S. 151.

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mental subjects," regarding which state legislation was virtually unhampered by the limitations of the Fourteenth Amendment [pages 110–111].

But since 1910 there has been a decided drift in an opposite direction. This drift appears, however, in cases declaring state excises to be invalid regulations of interstate commerce; and the development may therefore conceivably be only an application or extension of principles long regarded as dominating in the interpretation of the commerce clause. Yet the opinions of the judges stigmatize the excises as a denial of due process of law as well as a regulation of interstate commerce, and so invite the inference that the limitations of state power over foreign corporations engaged in a combined local and interstate business apply also to those whose business is entirely local. But no case has as yet gone to this extent. And the court's refusal to apply to domestic corporations[1] the rule it applies to foreign corporations

[1] Kansas City, M. & B. Ry. Co. *v.* Stiles, (1916) 242 U. S. 111. In this case the tax in question was imposed by the very law under which the charter of incorporation was obtained. In sustaining it, the court observed that the objectors "cannot be heard to complain of the terms under which they voluntarily invoked and received the grant of corporate existence." Whether the same approval would be given to subsequent increases is still an open question.

Though Mr. Henderson discusses the Stiles case on page 158, he says on page 156 that "the doctrine of the Telegraph and Pullman cases, that a state cannot in the guise of a license fee, tax a foreign corporation with respect to interstate business, or property beyond the jurisdiction, is of course applicable, *a fortiori*, to domestic corporations." But the tax in the Stiles case was measured by total capital stock, exactly like the taxes declared invalid in the Telegraph and Pullman cases. If the distinction between these cases and the Stiles case does not rest on the existence of greater power over domestic than over foreign corporations, it must be based on the distinction between taxes in force at the time the corporation is created or first enters the state and those first imposed at some later time. The taxes from which foreign corporations have been relieved appear to have been first demanded at some time after the corporation became established in the state, though in several of the opinions this fact is not deemed worthy of mention. Mr. Henderson refers to this and remarks that "there is undoubtedly much in the cautious language of the Supreme Court giving sanction" to the view that even a foreign corporation cannot complain under the Fourteenth Amendment of any tax in force before its entrance to the state. "If this view prevails," he continues, "the doctrine of the state's power to exclude foreign corporations has still much vitality left" (pages 159–161).

It seems much more likely that domestic corporations will be relieved from burdens on interstate commerce imposed subsequent to their creation than that foreign corporations will be held subject to such exactions as are required at the time of their entrance to the demanding state. But it would not be surprising if the court means to draw the line between foreign and domestic corporations, relieving the former, when they are engaged in interstate commerce, from all taxes measured in ways that

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makes it doubtful whether it will hold that foreign corporations which cannot plead the commerce clause are entitled to the same immunities under the due-process clause alone that are accorded under the due-process and commerce clauses together.

III

Mr. Henderson's treatment of this problem is the only part of his work against which any valid criticism might be directed. His chapter on the commerce clause is largely devoted to a review of the cases denying the right of a state to exclude foreign corporations from interstate commerce or to tax such corporations or others on their interstate business. Ever since 1877 it has been clear that the restrictive theory was no source of state power over the interstate commerce of foreign corporations. But in a number of cases specific taxes on the local business of a foreign corporation have been approved, notwithstanding the fact that the greater part of the business was interstate (pages 127–128). It was implied that it did not matter that the local business was not sufficiently remunerative to pay the tax, provided the corporation was free to escape from the imposition by renouncing the local business. In 1910, however, in the Telegraph and Pullman cases, the court, with much travail and by a vote of five to four, decided that a state could not measure an excise on the local business of a foreign telegraph or sleeping-car company by its total capital stock representing property without as well as within the state. To these cases Mr. Henderson devotes the last four pages (128–131) of his chapter on the commerce clause. Fuller treatment of these and later decisions which follow or distinguish them is given in the two succeeding chapters on "the doctrine of unconstitutional conditions" (pages 132–147) and on "foreign corporations and the Fourteenth Amendment" (pages 148–162). The effect of this arrangement is a questionable insulation of the question of state power over foreign corporations not engaged in interstate commerce.

By thus subordinating the interstate-commerce element in the cases, the author seems to the reviewer to have become over-optimistic as to

regulate interstate commerce or exact tribute from property without the state, and subjecting the latter to whatever may be demanded. It may be difficult to reconcile such positions on any theoretical basis, but the greater power over domestic than over foreign corporations finds some practical justification in the difference between one tax and a possible forty-seven, and in the opportunity of domestic corporations to surrender a charter carrying with it heavy burdens and to obtain a new one from some more lenient master.

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the extent to which the Supreme Court has abandoned the restrictive theory. Mr. Henderson presses the view that "what the Supreme Court has really done is to abandon the traditional doctrine that a foreign corporation can be excluded at the will of the state" (page 147). By this he seems to mean that the view has been abandoned entirely, even as to foreign corporations engaged solely in local business. This must go at least so far as to say that, whereas previously the power to exclude such corporations was so absolute that it did not matter for what reason it was exercised, now the exclusion requires justification by some good reason. The argument is that, since unlimited power to tax followed from unlimited power to exclude, the court in curbing the power to tax necessarily restricts the power to exclude. When the conclusion cracks, the premise must inevitably crack too. But Mr. Henderson does not sufficiently stress the point that the fissure in the premise need extend no further than that in the conclusion. The only price-fixing to which a state has thus far been subjected in respect to excises on the local business of foreign corporations is where that local business is carried on in connection with an interstate business. From the actual decisions, therefore, we can safely infer no more than that a state has no longer an unlimited power to exclude a foreign corporation from engaging in a local business that is united with interstate commerce.

I.

Mr. Henderson seems to give full recognition to this position in his chapter on the commerce clause. He refers to the view of Mr. Justice White in the Telegraph case to the effect that "a state could on no account deprive an interstate railroad of the sort here involved of the right to do local business" (page 130), and says that "if this view is not taken . . . the Telegraph and Pullman cases cannot, it seems to me, be sustained on any ground which is not equally applicable to corporations not engaged in interstate commerce" (page 131), thus implying that, if the view is taken, there is no compelling logical ground on which to infer limitations on state power over foreign corporations whose business is wholly local. In support of the view suggested, Mr. Henderson says:

As legal concepts, interstate and intra-state commerce may be distinct and separable. Dialectically the "right" to engage in interstate commerce need not include the "right" to carry on local business. But if, as a matter of business experience, an interstate railroad cannot be properly conducted without deriving some revenue from local business, to cut off

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that revenue does in fact interfere with economical railroading. It is not the bare power to carry on interstate commerce that the Constitution guarantees. It is the power to carry it on in a normal, business-like way [page 130].

This is to say that exclusion from local commerce is a regulation of interstate commerce whenever the two can be conducted more satisfactorily as parts of a common enterprise. Therefore no tax can be justified by an assumed right of exclusion if the exclusion as well as the tax would regulate interstate commerce. This makes the commerce clause the basis of the decisions limiting the right of the state to tax, and gives no reason for believing that the court has qualified the restrictive theory where the commerce clause cannot be invoked.

But Mr. Henderson is loth to accept this view. His arguments are difficult to unravel within the limits set by the demand for the conservation of paper. They are a blend of the psychological and the logical—of inference of what the court actually has in mind, and of analysis of what logic should put in its mind. If the logical arguments are urged only on the hypothesis that the interpretation of the judicial psychology is accepted, they seem to be compelling; but if they are based on independent considerations, they are open to question. Just what the author intends in this respect is doubtful, for the evidence is conflicting.

No exception can be taken to the final paragraph in the chapter on the commerce clause:

To say that these corporations cannot be expelled, as to their local business, for a bad reason, is to beg the whole question, for if the power of expulsion exists, the power exists to exact any pecuniary compensation as a condition of admission, and the refusal of the corporation to pay that compensation is *not* a bad reason. It can be termed a bad reason, only if the interstate business is by virtue of the Commerce Clause entitled to a reasonable contribution on the part of the local business, toward the payment of the fixed charges; or, on the other hand, if the local business is entitled on its own account, to constitutional protection against arbitrary exactions [page 131].

This recognizes that logic does not require the court to extend the protection of the liberal theory to foreign corporations engaged solely in local business, unless the commerce clause can not or will not be construed to forbid arbitrary expulsion from local business appurtenant to interstate commerce. From this we should infer that Mr. Henderson's ensuing logical argument is confined to the hypothesis that the

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commerce clause is not to be construed as preventing arbitrary expulsion from local business even where it forbids arbitrary taxation of that business. Though he recognizes that the hypothesis is not logically necessary, and lays the foundations for concluding that it is logically insupportable, he appears to think that the Supreme Court takes a different attitude. He notes that "of the five Justices who made up the majority [in the Telegraph and Pullman cases], only Mr. Justice White was willing to go so far as to say that a state could on no account deprive an interstate corporation of the sort here involved of the right to do local business" (page 130). And of Mr. Justice White's view, he adds that "there is at least a dictum in a later case against it" (page 131).

But against this interpretation of the author's intention must be set the fact that the discussion in his two succeeding chapters on "unconstitutional conditions" (pages 132–147) and on the Fourteenth Amendment (pages 148–162) is not qualified by any reference to the possible potency of the commerce clause in the decisions reviewed. The presentation conveys no hint that these chapters are not meant to be complete in themselves. The author even goes so far as to say that the fact that the corporations in the decided cases "were engaged also in interstate commerce . . . is on principle irrelevant" (page 144). He certainly gives the reader the impression that he is contending that the logic of what the court has already done requires it to deny to the state any arbitrary power to exclude foreign corporations even from an independent local business.

2.

Such a contention, it must be recognized, finds seeming support in the fact that the judges have declared that taxes on foreign corporations measured by their total capital stock deny due-process as well as regulate commerce. But this, it is submitted, does not establish that the commerce clause was not essential to the decisions. A phrase of Chief Justice White's in a decision[1] rendered since Mr. Henderson's book went to press helps to make this clear. The Chief Justice concedes that a tax on a foreign corporation measured by its total capital stock is an exercise of a power which the state undoubtedly possesses because of the right to tax the intra-state business "carried on as a result of permission to come in." But of the taxes in question on a corporation doing a combined local and interstate business, he says that "intrinsically and inherently considered" they are both direct

[1] Looney *v.* Crane Co., (1917) 245 U. S. 178.

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burdens on interstate commerce and a taking of property without due process because an exertion of authority over property and rights beyond the jurisdiction. "Intrinsically and inherently considered" they were wanting in due process. In order to be saved from sin, they must in some way be justified. The issue is whether justification may be found in the power of the state to exclude or expel. Mr. Henderson concedes that it can, if the power exists. If therefore the lack of power to expel depends on the applicability of the commerce clause, then where that clause is not available, the power to exclude may still exist, and what would be a denial of due process, if unjustified, may find its justification in being regarded as the price of a privilege. Thus the court can find the requisite logic to declare that a tax on local business, which denies due process when that business is united with an interstate business, does not deny due process when the local business stands alone.

In dealing with this problem it must be remembered that there is no adjudication denying the power to exclude or expel, except where expulsion has been predicated on demands found to be unconstitutional. The lack of power to exclude is inferred from the lack of power to tax as the state pleases. Since the taxing power has thus far been restricted only when the corporation was engaged in interstate as well as local commerce, we can infer no greater restriction on the power to exclude. The submerged premise need be no broader than the visible conclusion. In the cases the due-process element is interwoven with the commerce element. No logic can require that the former must have the same force alone that it has when combined with the latter. Any discussion of the one apart from the other is likely to convey intimations not warranted by the actual situation. Mr. Henderson's isolated treatment of the Fourteenth Amendment is interesting and valuable as a hint of the extent to which the court may be prepared to go in the future, but it cannot safely be taken as a statement of where the court now stands.

3.

A similar warning must be posted before the author's treatment of the so-called doctrine of unconstitutional conditions. This doctrine grew out of attempts by the states to prevent foreign corporations from removing to the federal courts suits brought against them in the state courts. An agreement not to remove, exacted as a condition on being admitted to the state, was held unconstitutional, and exclusion for breach of the unconstitutional condition was prohibited. But it was

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held that the state could expel for actual removal, provided it exacted no agreement not to remove. Here of course was a distinction without a practical difference, since the jurisdiction of the federal courts was effectually interfered with so long as the Damoclean sword of expulsion hung over the head of every corporation which invoked it. This power to expel was confined to expulsion from intra-state commerce. And a recent decision restraining expulsion of a corporation engaged in interstate commerce seems to be based, as Mr. Henderson points out, "on arguments applicable to all foreign corporations" (page 139). It appears likely, therefore, that the Supreme Court is now ready to reverse itself, and to hold that no corporation can be excluded for the reason that it has removed a case to the federal courts.

Mr. Henderson recognizes that "if the doctrine of unconstitutional conditions had been confined to this class of cases, it need not have seriously impaired the accepted view that a state could not expel a foreign corporation at will" (page 142). Expulsion for removing a case from the state court can be declared unconstitutional as "a coercive boycott aimed against the jurisdiction of the United States courts" (page 141). But expulsion for refusal to pay a tax, thinks the author, can be forbidden only by the Fourteenth Amendment (page 162). "In this respect these cases are totally different from those involving the right of removal to the federal courts, for a contract to oust a court of jurisdiction is against public policy and void, whereas an agreement to pay a sum of money or to receive service through an agent is valid and enforceable" (page 147). When such agreements are held unenforceable, "it becomes apparent that what the Supreme Court has really done is to abandon the traditional doctrine that a foreign corporation can be excluded at the will of the state" (page 147). The doctrine of unconstitutional conditions, he concludes, "in its later form, is that a state cannot in the guise of a conditional license to do business in a state, exact of a foreign corporation anything which it could not exact by direct imposition" (page 161).

Here again, in so far as the tax cases are concerned, the conclusion is dependent on the validity of the author's assumption that it "is on principle irrelevant" that the corporations that have been protected "were all corporations engaged also in interstate commerce" (page 144). But this is the very point to be established. If the Supreme Court decides to establish it, well and good. But this will be a step in advance of anything yet decided. Taking the cases as they stand at present, the doctrine of unconstitutional conditions need go no

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further than to declare that the state's power of exclusion must be limited to exertions of authority that do not impinge on other interests than those of the corporation. It cannot be used as a weapon against resort to the federal courts. So, too, the freedom of commercial intercourse between the states is a sufficiently important thread in our constitutional fabric to require a court to hold that it can neither be bargained away by a corporation, nor restricted by a state through any control over other matters that give a leverage on interstate commerce. The unimpeded exercise of the jurisdiction of the federal courts and the freedom of interstate commerce are matters of general concern, ingrained in our federal system. But general interests are appreciably less affected by regarding the opportunity to conduct in corporate form an independent local business as something that the state may put up at auction, with the privilege of rejecting unsatisfactory bids. It is therefore open to the court to insist that, where it has explicitly or impliedly clipped the power of the state to exclude, it has done so only to protect wider and higher interests than those of the corporation alone, and that nothing in the law thus far established requires it to hold that a corporation as a person protected by the Fourteenth Amendment has a constitutional liberty to enter other states to engage in purely local business. So far, then, as logic goes, the court can consistently refuse to make further inroads on the formerly well-established restrictive theory.

4.

Mr. Henderson's psychological inferences that the court means to go further are persuasive, but not fully convincing. It does not seem of great importance that there has been little explicit recognition in the opinions that the commerce clause, if it prevents high taxation of ancillary local business, must also prevent arbitrary exclusion from that business. Nor is it controlling that the court seems to think that there may be exclusion from such local business for non-payment of a tax thereon that is "intrinsically and inherently" proper and requires no justification from any assumed arbitrary power to exclude.[1] The court must adjust competing considerations, and the effect on interstate commerce of such exclusion from local business may well be deemed "indirect," like the seizing on execution of property employed in interstate commerce. And such inference as might conceivably be drawn from a case[2] holding that "a state cannot constitutionally extend a 'statu-

[1] This is the effect of the dictum in St. Louis S. W. Ry. Co. *v.* Arkansas, (1914) 240 U. S. 350, 368, to which the author refers on page 131. See page 561, *supra*.

[2] Simon *v.* Southern Ry. Co., (1915) 236 U. S. 115.

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tory' or 'implied' consent to service on a state officer, as to causes of action arising without the state" (page 146) is largely negatived by a decision[1] rendered since Mr. Henderson's book went to press, which held that, where a foreign corporation has filed a stipulation consenting in advance to service on a state official, there is no lack of due process in holding that the consent covers suits on causes of action arising without, as well as within, the state.

Mr. Henderson seems overbold, too, in concluding from Equitable Life Society *v.* Pennsylvania[2] that "it may be confidently asserted, then, that the doctrine of unconstitutional conditions applies to all foreign corporations having tangible property permanently located beyond the confines of the state, whatever their character or business" (page 146). This case sustained on special grounds a tax on a foreign insurance company, and the opinion made no mention of the argument used in earlier cases that the existence of power to exclude made the corporations subject to whatever burdens the state might see fit to impose. It does not appear, however, that the state contended for any such unlimited power, and the court in sustaining the tax on the narrower ground can hardly be said to have negatived the existence of broader grounds on which the same decision might be reached. Some expressions in the opinion, on which Mr. Henderson relies for the inference that the restrictive theory has been entirely abandoned, appear to have been put forward merely as a statement of the only argument open to the corporation, without conveying any intimation of the court's view of its merits. On the whole, therefore, up to the time when Mr. Henderson's manuscript left his hands, the Supreme Court seems to have uttered nothing that it cannot readily explain away if it refuses to open any new doors to the liberal theory.[3]

[1] Pennsylvania Fire Ins. Co. *v.* Gold Issue Min. & M. Co., (1917) 243 U. S. 93.

[2] (1915) 238 U. S. 143.

[3] Last March, however, in International Paper Co. *v.* Massachusetts, (1918) 246 U. S. 135, Mr. Justice Van Devanter went far towards justifying Mr. Henderson's inferences of what the court has in its mind. The learned justice summed up the results of recent decisions in six separate and seemingly distinct propositions, two of which made no mention of interstate commerce. These stated that the power of a state over the local business of a foreign corporation is "not unrestricted or absolute, but must be exerted in subordination to the limitations which the Constitution places on state action," and that the due-process clause forbids a state to tax the property of a foreign corporation which is neither located nor used within its borders. While interstate commerce was mentioned in the proposition which characterized a fee measured by total capital stock as a tax on the entire property of a corporation, notwithstanding the fact that the state declares it to be merely a charge for the

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IV

Since Mr. Henderson recognizes that the course of future decision is uncertain, and suggests in several places the reasoning by which the court can refuse to permit the liberal theory to make further inroads, any criticism of his discussion must be confined to matters of emphasis and presentation. His separate threads take on brighter hues when drawn from the fabric than they show in the pattern. But this is the way that law develops. Courts often abstract from the complexity of previous situations some element needed to support the desired solution of a different problem, and find it sufficient for the purpose. What are known as two-legged decisions usually leave us in doubt as to what would be the factor of safety if either leg were withdrawn. This is the case with all the decisions that Mr. Henderson reviews. If in dealing with the leg that he desires to strengthen, he has seemed to give too little attention to the other with which it has thus far been associated, he has nevertheless performed a valuable service in making clear the capacities of development in the one with which he is most concerned.

This development he cares for only as an instrument to practical results that he desires to see. As he makes clear in masterly fashion throughout his whole discussion and especially in his concluding chapter called "a critical re-examination", the restrictive theory is out of joint with the times and should as a matter of policy be entirely discarded. It was the progeny of other days when conditions were fundamentally different. It was conceived in artificiality and has been able to live a nominal life only because its most grievous implications have been overcome by more artificiality or by oblique attack. If it had been regarded as completely sacrosanct, no foreign corporation could have been subjected to a personal judgment, for it cannot be "present" so as to be served with process. But it can now be served where it is "found, doing business," and even the notion that this service is based on some implied consent must fall now that foreign corporations engaged wholly in interstate commerce can be proceeded against. For the consent theory was based on the power to exclude, the corporation

privilege of conducting local business, the most natural inference from this and the other propositions is that no assumption of power over any kind of a foreign corporation can justify a tax measured in whole or in part by property not within the taxing jurisdiction. Clearly enough the Supreme Court no longer clings to the notion that a state has autocratic power over any foreign corporation that it has allowed to establish itself within its borders. Whether it will go a step further and insist on an open door for those seeking admittance must, however, still be regarded as doubtful

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being assumed to agree to the conditions on which it was allowed to come in. Mr. Henderson's presentation of this development (pages 77–100) and of the orgy of fiction amounting to falsehood by which, for purposes of the jurisdiction of federal courts, corporations are treated as citizens though it is declared positively that they are not (pages 50–76) brings out in striking fashion how the artificial territorial theory of Taney in Bank of Augusta *v.* Earle has been thrown into the discard by the need of a decent adjustment of practical business problems.

The possibility that Mr. Henderson has been overzealous in contending that the logical implications of recent decisions require the abandonment of the restrictive theory, even as to foreign corporations not engaged in interstate commerce, detracts little, if any, from the exceeding merits of his contribution. His isolation of the due-process element in the cases may be technically precarious, and yet substantially reflect what is going on. He has shown convincingly that the changed conditions which have motivated recent developments justify, if not require, the further limitation of the old particularistic views of Taney's time. Much business that is not technically interstate commerce is national in scope. The amount of capital needed to carry it on precludes the possibility of doing it in other than corporate form. "In commercial affairs, the business unit, not the human individual, is significant; and to-day the typical business unit is the group" (page 179). In the case of a corporation, "the group includes . . . not only the passive element, the stockholders, but also the active, productive element, the directors, officers, agents and employees from president to common laborer" (page 169).

> It is to this group that the "rights" in a constitutional sense belong. It is their interests, in so far as they accord with certain principles of national policy, not the interests of a "creature of the law" that the Constitution was designed to protect. Now this group is as real, and its interests are as real, in one state as another. They are as much jeopardized when a foreign state subjects them to arbitrary or discriminatory legislation as when they receive such treatment from the state in which they were incorporated. The constitutional question, then, must be whether the law of the state, whether domestic or foreign, arbitrarily and oppressively encroaches on these group interests, or whether it is merely a legitimate burden imposed for meritorious social purposes [page 174].

No fine-spun theory, however authentic its pedigree, should blind us to the fact that a corporation is but a mechanism by which human

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beings act. In so far as that mechanism has peculiar capacities for evil, the state should be allowed peculiar powers of control in excess of those permitted in dealing with individuals. But to continue longer to ascribe any autocratic power to a state because of mystical conceptions of the nature of the corporate entity is to sacrifice on the altar of *stare decisis* the freedom of business intercourse plainly dictated by the need of the times. The early theory of corporations did not spring from the Constitution, but from the minds of judges who knew not the Israel of today. "As applied to modern industrial conditions, it runs contrary to the whole spirit of our constitutional system by permitting, at least in theory, discrimination, retaliation, and commercial warfare between the states" (page 165).

V

Important as is Mr. Henderson's contribution to the particular body of law with which he deals, its significance transcends its subject matter. As a concrete exposition of the way in which, even in the law, doctrine must bend before the facts, the study carries conviction where many disquisitions which press the same point in general terms must fail to secure converts. Mr. Henderson is as interested in telling us how law grows and how it ought to grow, as in advising us what to do with foreign corporations. He shows how the developments which he traces "have come rather in the form of exceptions, of presumptions of fact, of fictions, of illogical deductions from the assumed principles" (page 164). But he does not seek to fuse the illogicalities into any doctrinal unity. He turns instead to the driving power behind the shifting winds of doctrine. Happily also he gives his method philosophic expression, so that those who have found him clarifying the confusion with which he specifically deals may learn how to clarify for themselves other confusions that admit of similar treatment.

A few quotations from his closing chapter will reinforce those already given. He begins his summary by telling us:

> In the decision of practical controversies, bare logic has perhaps less influence even on its professed practitioners than jurists are willing to acknowledge. Few logical arguments are so compelling that they will not in time yield before a strong desire to attain some concrete result. In a psychological rather than a metaphysical sense, a legal system which claims inherent validity may often be merely the expression of a strong social desire, rooted in economic needs and ambitions, communicated through practical experience or intercourse to the mind of some jurist of statesman-like quality and creative legal power, and by him formulated as a logical framework [page 162].

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So Taney's system of foreign corporations, Mr. Henderson finds, "represented accurately the dominant desires of the time." It was a compromise that "truly reflected what was at the time the social resultant of the local jealousies and provincial interests of the more agrarian communities, and the budding nationalism of commerce and finance" (page 163). But the change since then, "by which for many purposes the nation rather than the state has become the economic unit, has immensely accentuated those social desires favorable to nationalism, and correspondingly weakened the force of local jealousies" (pages 163–164).

> Only the extreme juristic idealist would deny that this revolution has had some effect on the course of judicial decision. In the subsequent development of Taney's system, there may be traced something not unlike a phenomenon familiar to students of individual psychology. When an adherent of a systematic faith is brought continuously in touch with influences and exposed to desires inconsistent with that faith, a process of unconscious cerebration may take place, by which a growing store of hostile mental inclinations may accumulate, strongly motivating action and decision, but seldom emerging clearly into consciousness. In the meantime the formulas of the old faith are retained and repeated by force of habit, until one day the realization comes that conduct and sympathies and fundamental desires have become so inconsistent with the logical framework that it must be discarded. Then begins the task of building up and rationalizing a new faith [page 164].

To "the extreme juristic idealist" this psycho-analysis of the law is sheer futility, if not something worse. Men sit on law faculties who would characterize Mr. Henderson's contribution to legal method as empty twaddle, unbecoming to the majesty of a law book, or would even deem it seditious towards the eternal and unchanging gospel revealed to the jural saints. But such censors must be troubled by the fact that Mr. Henderson explains, where the devotees of eternal principles only confuse. They may not like the way he does it, but they cannot neglect the result. Before their very eyes, established doctrine succumbs to the demand for improved adjustments. The change takes place as Mr. Henderson describes it, whether you like it or no. No logical incantations can prevent it or tell where it will stop. You may scoff at what has gained the name of sociological jurisprudence; but, unless you are ignorant of the course of judicial decision, you must believe in it, as the farmer believed in baptism, "because he had seen it done."

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REVIEWS

Akbar the Great Mogul. By VINCENT SMITH. New York, Oxford University Press, 1918.—xvi, 504 pp.

Akbar the Great Mogul was by common consent one of the greatest monarchs known to history. Absolutely uneducated, hardly able even to sign his name, he took keen interest in all kinds of literature, art and philosophy. Religion was his particular hobby, but not religion in the narrow sense of the term. Born of orthodox Muslim parents (his father died of wounds received by an accident which he met with when descending a marble staircase to say his prayers in proper time) he displayed a remarkable tolerance of other religions, and spent the greater part of his leisure time in listening to expositions of religious doctrine by professors and scholars of all creeds and sects. He showed equal respect to the religious leaders of all faiths and spent large sums of money in securing the presence at his court of the best available representatives of all religions. Among his specially invited and honored guests there figured several Christian fathers (Jesuits) on whom he showered numerous favors and honors, at times even consulting them in affairs of state. These Christian fathers have left voluminous records of their impressions of the king and his court, of his character and polity, and of the country and its conditions. These records have been freely used in the preparation of this book. It is not improbable that Mr. Smith has put a rather exaggerated faith in the accuracy of their statements of Akbar's leanings toward Christianity, and of his dislike of his own religion. I have no doubt that some of their statements are lacking in foundation, particularly those relating to the deliberate desecration of mosques at Lahore (my home town). There is no evidence that Akbar ever gave up Islam. He was born of Muslim parents, and died a Muslim, though his religion was more eclectic than dogmatic. At one time his admirers tried to raise him to the dignity of an inspired prophet who had come to preach and found a new religion.

Akbar was an all-round genius. His claim to greatness, says Mr. Smith, "rests securely on the basis of his extraordinary natural gifts, his original ideas, and his magnificent achievements." Called to the throne at the age of thirteen, under circumstances of extreme difficulty

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ınd delicacy, with chaos, disorder, rebellion, treachery, insubordina-
ion and disaffection all around him, he refused to accept prudent
:ounsels which advised him to retire to the home of his fathers in
Kabul, for a time, to mature his plans for the reconquest and consol-
nation of his father's empire. He led most of his expeditions in per-
on, was "a brilliant soldier and pre-eminently a successful general"
vith a genius for organization not common in any part of the world.

Mr. Smith has told the story of Akbar's life and administration with
;reat lucidity, thoroughness and general impartiality, but at places is
ather unduly hard on him, forgetting the times in which he lived and
vorked. Akbar had the faults of his age. Any one placed in such an
rresponsible position as he was, having undisputed and autocratic sway
›ver millions of people, and over vast areas of land, would at times,
ınd on occasions, do things which do not accord with the ethical
tandards of an advanced humanity. Nor was Akbar quite free from
he vices of his class.

The most interesting part of the story is that which deals with
Akbar's statesmanship in winning the confidence and allegiance of
Hindus, who then, as now, formed the bulk of the Indian population.
He established the closest social relations with them, studied their re-
igion, abolished all discriminations based on race and religion, raised
ome of them to the highest positions in the realm, and otherwise made
hem feel as if in Akbar they had a king of their own choice, and not
›ne who was an entire stranger to the land and its people.

The most valuable part of Mr. Smith's volume, however, is the one
hat deals with the fiscal administration of Akbar and the economic
:ondition of the peoples of India in his time. In this respect the data
eft by Akbar's historiographers stand unique not only in Asia, but prob-
.bly in the whole world of that period. Abul Fazel, Akbar's histor-
an, who was also his prime minister, left a complete table of the rates,
vages and prices that prevailed in the time of Akbar, on the basis of
vhich one can make a fairly good comparison of conditions in India at
hat time and at present. Vincent Smith has made the comparison
ınd the following are his results.

First as to wages and food prices: The normal wage of an unskilled
aborer was from 1¼ pence to 1½ pence a day; that of a skilled
vorkman about 4¼ pence a day. Comparing the price of wheat as it
›revailed in Akbar's time, with what it was in British India in 1901–
:903, Mr. Smith shows that while in Akbar's time a rupee (35 cents)
:ould purchase 194.25 pounds of wheat, in 1901–1903 it could pur-
:hase only twenty-nine pounds. But "the low prices were not con-

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fined to grain." Nearly everything else was equally cheap. For instance, a sheep of the ordinary kind could be bought for less than fifty cents; thirty-four pounds of mutton could be had for thirty-three cents, and eighty-nine quarts of milk also for the same price. In 1913 the prices of food grains had increased considerably above those of 1901–1903, viz., in the proportion of 141 to 199 (according to the Parliamentary bluebook for 1913–14). In Akbar's time a man could thus "feed himself adequately for a cost of from a penny to two pence (four cents) a day." Fish was purchasable at "such easy rates as if they were not worth valuing." It is repeatedly said by the European visitors of the time that "the plenty of provisions" was "very great throughout the whole monarchy;" "everyone there" could "eat bread without scarceness."

Mr. Smith's summing up of the net results of these comparisons is so valuable that we give it in his own words:

> The rise in prices in the course of three centuries has been something like 500 or 600 per cent. The rise in wages has not been so great. I doubt if it comes up to 300 per cent. In Akbar's time the daily wage of the unskilled laborer was one-twentieth of a rupee. During my service in the United Provinces, between 1871 and 1900, the familiar current rate paid by Europeans was one-eighth of a rupee (*i. e.*, 4 cents), but natives of the country often paid less. The fraction one-eighth is 250 per cent larger than one-twentieth. The increase in the wages of skilled labor may be even less, and has hardly more than doubled. I refer to up-country conditions, not to Calcutta or Bombay. On the whole, so far as I can judge, the hired landless laborer in the time of Akbar and Jahangir probably had more to eat in ordinary years than he has now.

Concerning the material condition of the cultivator:

> The advance in prices does not affect the cultivators so much. We must remember that the absolutely landless laborer is not common in the country districts. I doubt if the cultivators on the whole were better off three centuries ago than they are now, and it is possible that they may have been less prosperous.

To my knowledge the absolutely landless laborer is becoming very common now.

No less remarkable are the conclusions about the population of the towns:

> When we come to compare the conditions of the town population then and now, exact, or approximately exact figures are lacking. . . . The de-

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velopment of commerce in modern times has been *so* great that townspeople on the whole *may* be better off than they were in Akbar's day. . . . Contemporary travelers undoubtedly were much impressed by the wealth and prosperity of the great cities in the reigns of Akbar and Jahangir. Fitch, for example, in 1585, tells us in a passage already quoted that "Agra and Fatepore are two very great cities, either of them much greater than London and very populous. Between Agra and Fatepore are twelve miles, and all the way is a market of victuals and other things, as full as though a man were still in a town, and so many people, as if a man were in a market." Terry, from the testimony of others, describes the Punjab as "a large province, and most fruitful. Lahore is the chief city thereof, built very large, and abounds both in people and riches, one of the most principles cities for trade in all India" (page 376.). Monserrate, speaking from personal knowledge of the same city as it was in 1581, declares that Lahore was not second to any city in Europe or Asia. Every kind of merchandise was to be found in its shops, and the streets were blocked by dense crowds. Similarly Burhanpur, in Khandesh, was "very great, rich, and full of people" (page 80.).

The foreign trade of the Empire in the time of Akbar is said to have been considerable and the customs duties were not high. The King's highway between Lahore and Agra, a distance of 400 miles, shaded by high pine on both sides was considered by travelers as "one of the rarest and most beneficial works in the whole world."

Mr. Vincent Smith discusses the art of Akbar's time rather critically, but ends with the following enthusiastic eulogy of Fatehpur Sikri, the city built by Akbar's orders:

> The world was ransacked to supply craftsmen and artists of every kind; and the buildings which express their skill, even if they were ill to live in, certainly are unsurpassed in their way as achievements of architectural arts.
>
> Nothing like Fatehpur Sikri ever was created before or can be created again. It is a "romance in stone"—the petrification of a passing mood in Akbar's strange nature, begun and finished at lightning speed while that mood lasted—inconceivable and impossible at any other time or in any other circumstances. The world may well feel grateful to the despot who was capable of committing such an inspired folly.

LAJPAT RAI.

NEW YORK CITY.

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Joseph H. Choate. By THERON G. STRONG. New York, Dodd, Mead and Company, 1917.—xvii, 385 pp.

Carlyle remarks in his *Sartor Resartus* that "biography is by nature the most universally profitable, universally pleasant of all things." Certainly, Mr. Strong in the work before us has justified the latter adjective if not the former. He confesses that a complete and authoritative biography of Mr. Choate is far from his purpose; instead, he gives us four essays illustrating that versatile gentleman's response and accommodation to four rôles in which his life was cast: the native son of New England, the adopted son of New York, the lawyer, and the ambassador. For the task of interpreting Mr. Choate to his fellow Americans, Mr. Strong had the advantage not only of a long and intimate acquaintance, but also of the voluminous scrapbooks which Mr. Choate pasted together in London and of the recollections which he prepared for his own family without thought of publication. "They are the beginning of my reminiscences," he remarked in putting the notes into Mr. Strong's hands, adding with characteristic wit that so far he had carried them down only to the date of his birth, and that, as to that event, he couldn't say that his memory was entirely clear.

The first two chapters on the New-Englander and the New-Yorker contain such meagre consecutive biography as there is in the book; the last two on the Lawyer and the Ambassador (each as long as the first two combined) are devoted mostly to anecdotes, abstracts of pleas before the courts in celebrated cases, and extracts from the interminable ambassadorial addresses in England. The selection of material is excellent and the interest of the reader is sustained to the end—or at least to very near the end, for at the last he begins to feel as tired as Mr. Choate himself must at times have felt of the eternal repetition of the assurances of Anglo-American solidarity. Undoubtedly no better theme could have been emphasized—and, indeed, it is likely that President McKinley sent the accomplished orator to London for the chief purpose of emphasizing just this theme—but when we have listened to it at mayors' receptions, at layings of cornerstones, at openings of pottery works, at mechanics' institutes, at university commencements, at hospital bazars, at authors' clubs, and otherwheres without end, we begin to turn the pages at a faster tempo than we did when reading of the heroic efforts of Dr. George Choate in supporting four sons at once in Harvard on a practice which commanded seventy-five cents for a professional visit, or of the grilling

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which one of the beneficiaries of that sacrifice gave Russell Sage when he had him on the stand in the Laidlaw case.

Among the many anecdotes and characterizations of the men of his generation Choate is at his best in the description of Mr. Charles Southmayd, his law partner in the old firm of Butler, Evarts and Southmayd. Mr. Strong most acceptably prints the description at length, through fourteen pages (158-171). For the picture of a simon-pure conservative living in the full nineteenth century we recommend the reader to this portrait of Mr. Southmayd—the wealthy bachelor lawyer who wouldn't ride on the elevated, or in a surface car unless drawn by horses, who not only disapproved but even resented personally the march of invention, and who reminded Matthew Arnold during a summer's acquaintance at Stockbridge "of an old-fashioned solicitor dug out of Dickens or Trollope or Thackeray." It was this Troglodyte toiling in his office, whose very name is known today only to a handful of Americans outside the legal profession, who prepared the argument which overthrew the Income Tax in the Supreme Court in 1895. Choate himself, who made the plea, declared that "it was Southmayd, who never went near the Court, who won the case."

At the very close of his life, when he was past fourscore years of age, Mr. Choate, "the first citizen of New York," threw himself with ardor into the cause of the Allies, serving as chairman of the Mayor's committee to welcome our distinguished visitors from England and France, and giving himself with an enthusiasm proportioned to his spirit's flight but not, alas! to his physical strength. Nevertheless, Mr. Choate was not a reformer. His was one of those self-contained natures that observe the shifting currents of social life rather than direct them. Conservative in his social politics, holding that "the right of property lies at the root of all civil government," select and exacting in his personal associations, endowed with a perspicacity of intellect which pierced illusions, and gifted with a wealth of humor which detected humbug—Choate was a poor subject for the tense rôle of the reformer. James C. Carter, his college-mate at Harvard and for many years his closest friend in the legal fellowship of New York, remarked of Choate that he "had no capacity for moral indignation." He didn't care for indignation at all. He preferred to combat evil with the shafts of sarcasm and to expose hypocrisy with the searchlight of humor. It earned him the reputation of frivolity in the eyes of the prophets of owlish and final wisdom, but Choate, like Job, wore his indictment like a crown.

The same alertness of mind and independence of judgment which

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alienated Choate from mass-movements of any sort also made him a poor subject for party politics. He was a Republican from the first appearance of the party in a national campaign (1856), yet he never held political office, except the chairmanship of the constitutional convention in New York in 1894, until he was sent abroad as ambassador to London in 1899. On the one occasion on which he attempted, or rather was persuaded by his friends, to "buck" the political machine of New York, by contesting the nomination for United States senator with Thomas C. Platt in 1897, he received just seven votes in the legislature. Perhaps it was better so. Choate felt no call to cleanse the Augean stables at Albany, nor can we think, without sense of incongruity and loss, of that bright particular spirit being chained to the car of professional politics.

Mr. Strong makes some historical slips, as when he speaks of "New York City" in 1692 (page 5), and calls Platt senator for the term preceding the election of 1896 (page 87), and speaks of Evarts as "a member of Hayes' administration in 1876" (page 138). He also dates the appointment of Choate to England in 1898 (page 97), though he later (page 239) gives the correct date, January 11, 1899. Beacher for Beecher (page 140) and George IV for George III (page 284) are doubtless typographical errors. The plan of the book tempts the author to some rather tiresome repetitions. For example, he describes Choate's character, in nearly identical words, in speaking of him as a New-Englander (page 30), as a New-Yorker (page 75) and as a lawyer (page 135). Though the narrative is lively and well told, there are some astonishing lapses of grammar, especially in participial constructions: "Possessing remarkable characteristics, association with him was always agreeable" (page 60). Sometimes Mr. Strong's awkward sentences convey a humorous misconception of his meaning. For example, "It so happened that at the Twelfth Night Revel at the Century, in 1898, having just been appointed Ambassador at the Court of St. James, he officiated on that occasion as King of the Revel" (page 97); or again, "Mr. Southmayd, wearied with the heat and burden of the day, and with a large competency, retired from the firm" (page 158); or again, speaking of Choate's love for Salem, "No one can read his Salem address and fail to realize that in point of real sentiment it had the first place in the recesses of his heart" (page 30). These are unfortunately not the only examples in the book of the kind of sentence boys are asked to correct on college entrance papers in English composition.

D. S. Muzzey.

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L'Assemblée de Vincennes de 1329 et ses Conséquences: Étude sur les Conflits entre la Jurisdiction laïque et la Jurisdiction ecclésiastique au XIV^e Siècle. By OLIVIER MARTIN. (*Travaux Juridiques et Économiques de L'Université de Rennes. Premier Supplément.*) Rennes, Bibliothèque Universitaire, 1909.—xvii, 429 pp.

Students of the history of ecclesiastical jurisdiction in France during the Middle Ages will find Professor Martin's work of great interest and value, for it consists not only of an exhaustive study of the Assembly of Vincennes (1329), but also of an illuminating account of ecclesiastical jurisdiction in France from its beginnings down to the end of the fourteenth century. New light is thrown upon the Assembly itself and also upon the whole question of conflict between lay and ecclesiastical jurisdictions which the Assembly had under consideration. Inspired by the counsels of Professor Esmein to undertake this work (see page v), the author has followed the fine example of that great scholar in his standards of research and of exposition. There was need for a careful examination of the materials bearing upon the Assembly of Vincennes. In carrying out this design the author has not only studied the printed sources of information, but also has made full use of manuscript materials (see pages vi–xvii).

In the Introduction (pages 3-47) the author traces the origin and development of ecclesiastical jurisdiction, outlines its scope in the thirteenth century, and considers the conflict between lay and ecclesiastical courts down to 1328, the year before the holding of the Assembly of Vincennes (1329). For this part of his work M. Martin has relied for the most part upon the results of the researches of other scholars, notably Esmein, Beauchet, Viollet, Dove, Fournier, Langlois, and Butarie.

Book i (pages 51-220) is devoted to the Assembly. The author first studies the chief contemporary sources of information, namely, the *Libellus Petri Bertrandi* and the *de origine jurisdictionum* (pages 51-68). He then traces the history of the Assembly, considers its general character, and gives personal sketches of the men who took the foremost part in its debates, Pierre de Cuignières, Pierre Roger, and Pierre Bertrand (pages 69-100). The next chapter (pages 101-149) is concerned with the respective domains of the two jurisdictions, lay and ecclesiastical, from the point of view of theory. The author first sets forth the thesis of Pierre de Cuignières, the royal advocate, in support of temporal jurisdiction as opposed to ecclesias-

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tical. This is followed by an exposition of the thesis of the clergy in support of the jurisdiction of church courts. In chapter iv (pages 150-191) M. Martin considers the complaints (*griefs*) of de Cuignières brought before the Assembly and the response of the clergy, led by Pierre Bertrand, bishop of Autun. To his account of this most interesting debate the author adds certain reflections of his own. In the fifth chapter (pages 196-220), upon the consequences of the Assembly, M. Martin considers the difficult problem as to the juridical and historical importance of the Assembly.

Book ii (pages 223-378) is a study of the conflicts of jurisdiction in the fourteenth century, first under Philippe de Valois (1330-1350) and then during the second half of the century. This portion of the work is based largely upon the results of the author's own study of manuscript sources, the archives of the Parlement de Paris and of the officialités. The excellent arrangement of the subject-matter in book ii enables the reader to obtain a firm grasp of the scope of ecclesiastical jurisdiction in France from the time of the Assembly of Vincennes down to the end of the fourteenth century.

Book ii is followed by the author's conclusion (pages 379-389) and by the text of certain *pièces justificatives* (pages 393-429), most of them derived from the archives of the Parlement de Paris.

The importance of the Assembly of Vincennes, summoned by Philippe de Valois and presided over by him in person, has always been recognized by the constitutional historians of France (see, e. g., Esmein, *Histoire du Droit Français*, 7 ed., pages 642 *et seq.;* Brissand, *History of French Public Law*, published in the Continental Legal History Series of the Association of American Law Schools, 1915, pages 189 *et seq.*) ; but the question as to the precise constitutional and legal consequences of the Assembly has been the subject of controversy through all succeeding ages, much of which has centered in the problem as to just what the King decided at the termination of the great debate between the representatives of State and Church. This whole problem M. Martin has subjected to minute and scholarly examination (see especially pages 196-220, 379-389), with the result that he has at least partially lifted the veil of obscurity that has hung over the Assembly. M. Martin concludes that the struggle in the Assembly was really a struggle between royal and ecclesiastical jurisdiction and that this struggle, despite the vague words of the King, ended in a decision favorable to the King's tribunals. This result is reached not only by studying the contemporary authorities, but by tracing the history of the fourteenth cen-

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tury from the time of the Assembly (1329) onwards (see pages 223-379). In this study of events after 1329 special emphasis is laid upon the decisions of the Parlement de Paris.

M. Martin's general conclusion, that the Assembly was a victory for royal jurisdiction, fits in with the well-established results of former historical studies. All through the thirteenth century the struggle between the secular and ecclesiastical tribunals in France proceeded fiercely, because the King and his feudal lords saw clearly that unless they asserted their position firmly the courts of the Church, with their enlightened judges and justice, would ultimately deprive them of more and more judicial power. It was in the early fourteenth century that the contest became most acute. In the final settlement of this struggle the Assembly of Vincennes played a rôle of great importance. Certainly from this time onwards the decadence of the ecclesiastical courts set in and the royal jurisdiction advanced step by step at the expense of the Church courts. The Assembly seems indeed to have been the turning point in the whole history of the two rival systems of justice. In grasping this fact and in making it the central theme of his work M. Martin has shown that he is an historian not only of details but of the great underlying currents of thought and action. By viewing the Assembly of 1329 in the light of French medieval development as a whole the learned Professor of Law at the University of Rennes has placed all medievalists under obligation.

One may venture to assert that future historians of the Constitutions of Clarendon (1164), which arose out of a struggle in England similar to that in France, will find *L'Assemblée de Vincennes de 1329 et ses Conséquences* an inspiration and, in certain of its features, a guide to fuller understanding of the history of royal and ecclesiastical justice in England in their relations one with the other during the Middle Ages. The conflict between Henry and Becket resembled the struggle between the French King, as represented by de Cuignières, and the Church, as represented by Pierre Bertrand, bishop of Autun. The exact consequences of the assembly of bishops and barons at Clarendon have been matter of subsequent uncertainty and dispute somewhat comparable to the uncertainty and dispute that have gathered round the decision of Philippe de Valois at Vincennes. Were not the Constitutions of Clarendon, despite the subsequent conduct of Henry in reference to them, the really decisive turning point in the English development toward the ascendency of royal jurisdiction over the ecclesiastical? Did not the decadence of

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ecclesiastical jurisdiction in England, a process that extended over so many hundreds of years, begin fully a century and a half earlier than in France? Here is an interesting question in comparative constitutional history which M. Martin has not raised, but which his work will help to solve. In certain respects the English Assembly of 1164 and the French Assembly of 1329 are very different one from the other; but in other respects they exhibit striking similarities of character. At all events the main theme at both assemblies was the great problem of the rival jurisdictions; and whatever view may be taken by the future historian of ecclesiastical jurisdiction in England as to the deeper significance of the Constitutions of Clarendon, he will wish to ponder well over the results of M. Martin's researches, for they will enlighten him upon a course of development similar to that in England and in other countries which had come under the influence of the Western Church.

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The English Middle Class. By R. H. Gretton. London, G. Bell and Sons, 1917.—xii, 238 pp.

"Middle Class" is one of those over-worked terms of uncertain meaning and varying content whose use tends to obfuscation of thought on social questions. As it passes current today in England, where it originated, it may connote many things which it has not always connoted, among others Non-Conformist virtues, marble-topped black walnut furniture, Queen Victoria, snobbery, an even keel between the Scylla of Kaiserism and the Charybdis of Bolshevism, or an eye to the main chance. But all that it positively denotes is a social stratum between one above and one below. As the name of a class that has long dominated English society and politics it is singularly inexplicit about itself.

Mr. Gretton offers us not a comprehensive history of his subject—that would run to many volumes—but an historical sketch of the English middle class that is at the same time an economic and social interpretation of modern English history. He starts with a positive definition of the middle class as "that portion of the community to which money is the primary condition and the primary instrument of life." There was nothing, he holds, that can properly be called a middle class in England prior to the rise of a money economy. The origin of such a class he finds in the new "moneyed men" who ap-

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peared in the fourteenth century, and he agrees with those students of English economic history who argue that the rise of this class was not a gradual development from the early medieval gilds, but a relatively abrupt phenomenon caused by the liberation into currency of hoarded money resulting from the expulsion of the Jews and the fall of the Templars. The economic legislation of the fourteenth and fifteenth centuries bears abundant testimony to the ceaseless activity of a new type of man, the capitalist, for whom there was no place in the medieval theory of society, and the incompatibility of his enterprises with the older standards of business morality which the governing classes were seeking to uphold. Frequently recurring statutes against "engrossing," speculation and usury prove at once the extensive operations of the new "profiteers" and the futility of all attempts to put them down. Wit, secretiveness and chicane successfully parried legislation inspired by feudal conceptions of society and by ecclesiastical ethics. Profits accumulated in trade were presently invested in the soil, and landowners of a new type supplanted the feudal baronage that dashed itself to pieces in the civil wars of the fifteenth century. But the new landlords remained essentially middle-class. Their attitude toward the land and its inhabitants was primarily that of the investor. The usurer and the forestaller did not change his habits when he acquired land. He now "rack-rented" his tenants, or evicted them from their ancestral holdings to make way for a more profitable animal, sheep. When in the sixteenth century capitalism captured the land as it had previously captured trade, men saw that new masters had arisen in England.

Mr. Gretton views the sixteenth century as a critical period in the history of the middle class. Its attitude toward politics and the public life of the nation had previously been one of aloofness. Indeed he attributes the economic progress which it had made partly to "the singular completeness with which it had succeeded in remaining, so to speak outside the State while existing inside the nation." Public spirit is not to be looked for in a class whose most characteristic activities are viewed by the state as socially baneful and morally reprehensible. But capitalism gradually became respectable. In the sixteenth century we see the middle class abandoning its earlier detachment. Its members entered the aristocracy and the administration. As Mr. Gretton puts it, it "took its stand by a stake in the country when the old landed classes had for various reasons lost their hold." In so doing it fell heir in some degree to aristocratic traditions of statesmanship, but at the same time it infected the state with

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its own middle-class outlook and habits of thought. The policy of Elizabeth's reign was essentially a middle-class policy.

The interpretation of the Puritan Revolution that makes it a class conflict is not novel, though it is calculated to give offence to well-bred persons accustomed to think of that transaction as purely a struggle for religious and political principles. According to Mr. Gretton the revolutionary movement of the seventeenth century was not only a middle-class movement, but a middle-class mistake. For once, the only time in its history, he says, the middle class went to the limit of logic and struck down every institution that was not, or could not be made, middle-class. It overthrew the monarchy, parliament and the church. And despite its temporary triumph it failed. Thereafter it never repeated its blunder. "It abandoned the attempt to make a middle-class state, and successfully proceeded to make the State Middle Class." It captured the government by a process of peaceful penetration; it never again made a frontal attack upon it. From the days of the Restoration onward it controlled national policy while sheltering itself behind the ancient constitution of England. In the eighteenth century it might have said of itself, had frankness of speech been congenial to its habits, "l'état, c'est moi." It had absorbed the aristocracy and subjugated the masses. In fact, the aristocracy of the eighteenth century was sprung not from the ancient aristocracy of England, but from the middle class of the Tudors and Stuarts. Thenceforth "middle class" was a misnomer. Men with the power to penetrate beneath superficial appearances to inner realities have seen the essential unity of interest of the middle class and the new aristocracy. Bagehot saw it when he bade the House of Lords beware how they quarreled with the House of Commons, faced as both were by the rising tide of the workers.

To show that the middle class (i. e., capitalists) were the principal beneficiaries of the Industrial Revolution, the Reform Act of 1832 and Free Trade needs no labored argument. Nor is it likely to be disputed that the policy of Great Britain in the nineteenth century was essentially *bourgeois*. There is, indeed, no Capitalist Party in England, as there is a Labor Party, but Mr. Gretton would no doubt explain this fact by saying that the middle class has never lost that habit of indirection, that disinclination to call a spade a spade, if it happen to be a middle-class spade, which it acquired in the days when it was as yet an Ishmaelite in the land.

Mr. Gretton does not aspire to prediction. He does not seek to foretell the fate of capitalism. He does casually suggest, however,

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that the middle class made what was ultimately its supreme mistake when, in its zeal for gain in the days of the Industrial Revolution, it permitted and encouraged the concentration of large masses of poverty-stricken workers, heedless of the fact that they were exploited, and therefore angry, men.

R. L. SCHUYLER.

Proceedings of the New York State Historical Association, vol. xvi. Glens Falls, The New York Historical Association, 1917.—357 pp.

The New York State Historical Association does its work quietly, modestly and seriously. Organized in 1899, it continued for ten years as a society of antiquaries interested chiefly in the Lake George and upper Hudson regions. It then broadened the scope of its conerns more truly to include the history of the whole commonwealth; its membership has now passed the thousand mark and its earnestness and vitality have been so apparent that the state has designated it as the legal custodian of four parks of historic interest. It has published some monographic studies, notably that of E. M. Ruttenber on Indian place names, and at its annual meetings there have been read many papers which are genuine contributions to the history of the state and the nation.

The sixteenth annual volume of proceedings, just issued from the press, contains the papers read at Cooperstown in 1916. In conformity with the society's custom, an attempt was made to take a brief but general survey of some of the institutions of the province and state of New York, and to make a more intensive study of the archeology and history of the section where the meeting was held. Of the papers serving the first purpose, that of Professor C. W. Spencer, dealing with the land system, is perhaps most useful to the general student. After commenting upon the slow expansion of New York compared with its neighbor, Pennsylvania, the writer finds an explanation in the confusion and open corruption of the land office, which seemed more to serve the partisan needs of Fletcher and Cornbury (in whose days about three-fourths of the province was granted to some thirty persons) than any large concerns of public policy. Titles granted and regranted, with the vaguest definition in the Indian nomenclature, made for such uncertain tenure that New England immigrants were not attracted till the muddle was cleared up in the last years of the eighteenth century, while manorial privileges, bestowed extrava-

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gantly on the great grantees, brought on the riotous confusion of the eighteen-forties. There is nothing new in this reflection, but probably nowhere else has the matter been made so clear, with careful reference to the laws and documents.

Professor A. H. Buffinton, of Williams College, starting with the text that "the fundamental question of the colonial era was the ultimate destiny of the North American Continent," in a scholarly and convincing manner develops the thesis that New York during the first half-century of this contest, failed to take the leadership her situation would have made appropriate, because, following the selfish interest of her traders, she "adopted as her own the neutral policy of the Iroquois, and even carried on a brisk clandestine trade with Canada." Yet, in maintaining an alliance with these warlike savages, the New Yorkers performed an inestimable service, and made Albany a kind of Hague tribunal for all Indian relations. The Reverend W. H. Benham, of Buffalo, contributes a good and thorough summary of the progress of all the Christian denominations under Dutch and English rule; Dr. Thomas E. Finegan, Deputy Commissioner of Education of the state, likewise reviews the course of education in the schools and in Kings College; and Edward P. Mitchell, editor-in-chief of the New York *Sun*, speaking on journalism in the province, brings out the fact that editors like Bradford and Zenger were but figure-heads, the influence of the press being really wielded by the political essayists welcomed to their columns.

There are five papers upon the local antiquities of Cooperstown, and upon the great novelist who lived there, and his characters. That on "Cooper at Home," by the Reverend Ralph Birdsall, is the most readable, and that on Cooper's historical inventions in the "Last of the Mohicans," by the late James A. Holden, the most exhaustive. Dr. Sherman Williams, president of the society, emphasizes its educational opportunity and duty in an address on "Our History and Our Schools."

The volume does credit to all those concerned in its production. Such state organizations co-ordinate the work of the scores of local historical societies, and are truly "patriotic" in that they stimulate and satisfy a healthy curiosity as to causes, rather than content themselves with basking in the borrowed glory of their ancestors. Their researches through the local annals, if informed with broad social sympathy, will contribute, bit by bit, greatly to enrich the understanding of the development of the American people.

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The Government of the British Empire. By EDWARD JENKS. Boston, Little, Brown and Company, 1918.—viii, 369 pp.

The task of an author who sets out to write an account of government in that heterogeneous aggregate of changeful communities which we call the British Empire is not easy. The international lawyer may insist that the empire is a single sovereign state, and the orthodox political scientist may descant upon the legal sovereignty of the Imperial Parliament over all British subjects. But the student of government must accept local variation, not imperial uniformity, as the guiding principle of the empire's political arrangements. He knows that there are wide stretches of the empire for which the Parliament that sits at Westminster does not in fact legislate, where its titular sovereignty is no more than that of a *roi fainéant*, and in which the Imperial Government does not govern. He cannot surely confine himself to the institutions of the empire which are genuinely imperial, of which, if we except the recently created Imperial War Cabinet, there appear to be only two. These are the Kingship and the Imperial Conference, and of these two the former has ceased to be, and the latter has not as yet become, an institution of government. The Conference can recommend, but it possesses no legislative or executive authority, while the King, as Bagehot informed his surprised countrymen half a century ago, has only the right to be consulted, the right to encourage and the right to warn. A writer on government in the empire must take into account not one legislature and executive only, not a single system of defence, justice and finance, but many. He must describe governments the most dissimilar in nature, ranging all the way from the socialized democracies of Australia and New Zealand to the autocracies of Ashanti and Basutoland. Furthermore, his subject-matter is in a state of such rapid metamorphosis that description must often lag behind events, and occurrences of first-rate importance will make parts of his work incomplete or even seriously misleading before it is published.

Mr. Edward Jenks is an accomplished student of English government and law, and his reputation as a writer of authority on these subjects is sufficient guarantee that his latest volume, *The Government of the British Empire*, is something other than a condensed paraphrase of such works as those of Anson and Lowell and Dicey. Though intended to serve as an introduction to the study of the larger standard treatises on the subject, it is original in plan and execution, as Mr. Jenks has taken the precaution to tell us, and is based to a great extent upon study of first-hand material.

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By classification some semblance of order may be introduced into the medley of governments that exist within the empire, but even within classes there is much individual variation. Mr. Jenks describes separately the governments of (1) the United Kingdom, (2) the self-governing Dominions, (3) the Crown Colonies, and (4) British India. No two writers would agree on the precise proportions of space to be allotted to each of these classes, but in giving five times as much to the United Kingdom as to all the rest of the empire, Mr. Jenks lays himelf open to the charge of insular-mindedness, especially since he devotes almost as many pages to local government in the British Isles as to the government of the whole of the Outer Empire.

The swift march of events has dealt unkindly with parts of his description. In 1917 the British Cabinet became for the first time truly imperial when it admitted representatives from the Dominions and India, but the chapter on the "Imperial Cabinet" makes no reference to this significant innovation. The British Government has pledged itself to introduce responsible government into India by gradual stages, and an official program of specific reforms looking towards that end has been published, but Mr. Jenks leaves us to assume that benevolent despotism is still the ideal of Anglo-Indian administration. Altogether, one fails to carry away from a reading of the book a vivid impression of the crisis of transformation and regeneration through which the empire is now passing.

The description of the structure and processes of government in the United Kingdom is clear and orderly, though in several cases the reviewer is unable to assent to the author's judgment. In his account of the development of constitutional monarchy (chapter ii) Mr. Jenks fails to make clear what is really the vital point, how means were devised to compel the Crown to observe the law. The statement that the House of Commons may at any moment force a ministry to resign or appeal to the country (page 113), while no doubt technically true, is likely to create a false conception of the practical relations between the House and the Ministry. Following Bagehot's lead, Mr. Jenks thinks that the monarchy acts as a disguise behind which the government is carried on in a manner scarcely intelligible to the masses of the people (page 37). When Bagehot wrote, this was probably true, but popular knowledge of politics and government has increased so vastly since his time that the average Englishman can no longer be under any illusion as to who governs.

R. L. SCHUYLER.

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The Essentials of American Constitutional Law. By FRANCIS NEWTON THORPE. New York, G. P. Putnam's Sons, 1917.—xii, 279 pp.

One of the excellent features of the case system of legal study is the inclusion in the case books of badly-reasoned opinions, and of cases that are no longer law. Thus the student who has a fondness for being intellectually spoon-fed soon learns the dangers of his propensity. He no longer accepts as gospel everything he sees printed in a book. He acquires the habit of testing and weighing what he reads, and of thinking for himself.

The text-book under review offers the same pedagogical advantages. While it contains much that is safe and sound, this is interspersed with a great deal that is erroneous. No student, therefore, can feel safe in accepting anything that the book tells him. He must compare its pages with the Constitution and the judicial decisions before he can feel confident that he knows the supreme law of the land. Thus he is put on his own mettle. If he is guided by a wise and informed teacher, he can be assured of excellent mental discipline, and, in time, of a fair knowledge of constitutional law. Manifestly it would interfere with the best use of the book, if reviewers were to point out all the pitfalls which the student is expected to find for himself. It may do no great harm, however, to refer to a few of the more obvious blunders, so that teachers who desire their students to learn self-reliance may feel assured that the book will serve their purpose.

Marshall's term as chief justice was not "the first thirty years of the existence of the court" (page 28). Jay, Rutledge and Ellsworth preceded him. "The original jurisdiction of the Supreme Court is" not "co-extensive with the judicial power delegated by the Constitution" (page 136). The objects of the Constitution, as set forth in the preamble, are not the criterion of the powers of Congress under the "necessary and proper" clause (page 26). It is no longer true that a corporation cannot maintain a suit in a federal court against a citizen of a different state from that by which it is chartered "unless the persons who compose the corporate body are all citizens of that state" (page 142). They are now conclusively presumed to be citizens of that state, although the fact may definitely appear that they are not. The statement that it is not the delegation to Congress but the actual exercise of its power to regulate commerce "that makes the exercise of a similar power by the state void" (page 75)

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is true only of such subjects of commerce as are regarded as not "national in character." Many important decisions turn on the issue whether the commerce involved is national in character.

In many instances where the law is not positively misstated, it is put so blindly as to be merely a point of departure for the student. We are told that, in spite of the full faith and credit clause, "a judgment rendered in a state may be questioned in a collateral proceeding in another state" (page 147), and are not warned that this applies only to questions of jurisdiction or fraud. Misleading, if not erroneous, is the statement that "state insolvent laws apply to contracts within a state between one of its citizens and a citizen of another state" (pages 37-38). The announcement that "as to limitations of state power within state jurisdiction . . . the several state constitutions alone are authoritative and final" (page 176) is likely to convey the impression that the Fourteenth Amendment does not limit the exercise of state power, though the author may save himself from positive error by the meaning which he attaches to "within state jurisdiction." The treatment of *ex-post-facto* laws in the chapter on "The Law of Citizenship" may lead the reader to assume that aliens derive no protection from the clause. Some other than a correct impression is inferable from calling the "right of citizens of each state to all privileges and immunities of citizens of the several states" one of "the distinctively state functions" (pages 10-11). It is a federal guarantee to citizens of immunity from what otherwise might have been a state function.

In contrast with these instances of inaccuracy or looseness, not a little of the book is correct and simple. No one can question that "there is such a thing as the peace of the United States" (page 85), or that "the war power is possessed by Congress exclusively, for the limitation of [*sic*] the states as to declaring war can be construed only as an exclusive delegation of this power to the United States" (page 46). Among other unexceptionable statements are the following:

> The essential power of any federal court is to exercise federal judicial jurisdiction [pages 124-125].
>
> No state has jurisdiction that is denied it by the Constitution of the United States [page 151].
>
> To whatever extent Congress exercises jurisdiction, to that extent it governs [page 163].
>
> Government, in a republic, may be said to express itself in laws [page 30].

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Congress is not under contract to coin money, to pay the debts of the United States, or to borrow money in any particular way [page 40].

So a postal law of Congress excluding lottery tickets from the mail is not an abridgment of the freedom of the press [page 43].

Nor is anyone apt to controvert the suggestion that the legislative powers of Congress over taxation, money, commerce etc. "indicate (or seem to indicate) a larger delegation of authority to Congress than its authority to regulate its membership" (page 73).

Such passages as those quoted will be welcomed by the student as breathing-places between others that will tax his powers to the utmost. In the frequent references to sovereignty he will find occasion to use all the mental energy he can muster. One or two quotations will indicate the force of the challenge to his understanding:

Doubtless the qualities of sovereignty are equal qualities—each essential to the supreme end and purpose of sovereignty—which end and purpose is to be and to remain sovereignty [page 35].

Were sovereignty to define (if it were possible to define) its rights, it would limit itself, and to that extent cease being sovereign [page 200].

To the extent that the individual person is identified with sovereignty, he or she can do no wrong, and his or her rights are primary as well as fundamental [page 199].

But the state cannot exercise taxing power beyond its jurisdiction, a limitation parallel to the limitation of the sovereignty of the state, that is, a version (however unphilosophical) of the idea in the phrase "residuary sovereignty" [pages 52-53].

It is to be feared that some students will become discouraged in the presence of such profundity and will be inclined to minimize unduly their own intelligence. It is to be hoped, however, that they will not miss the comfort offered early in the book, where they can learn that "sovereignty is indefinable; is not, strictly speaking, comprehensible" (page 6). They will find no evidence in the volume that this is an over-statement.

Obviously the few quotations that can be given in a brief review cannot indicate adequately the qualities of the book as a whole. The excerpts given are, however, characteristic of the general plan and its execution.

THOMAS REED POWELL.

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Departmental Co-operation in State Government. By ALBERT R. ELLINGWOOD. New York, The Macmillan Company, 1918.—300 pp.

If only the United States Supreme Court had found that the judicial power with which it is vested includes the authority to render advisory opinions, we might now be relieved of the necessity of looking to writers in the *New York Times* for the settlement of the question whether the Constitution permits the president to attend peace conferences in foreign parts, with the resulting uncertainties when the opinions of these self-constituted advisors are not made the basis of official action. But long ago the Supreme Court feared to tread where others have since rushed in. In 1793, when President Washington, through Jefferson as secretary of state, asked the judges "whether the public may with propriety be availed of their advice" on certain questions growing out of the treaty relations with France, it was replied that "considering themselves merely as constituting a legal tribunal for the decision of controversies brought before them in legal form, these gentlemen deem it improper to enter the field of politics, by declaring their opinions on questions not growing out of the case before them." No answers, therefore, were returned to the twenty-nine questions propounded. According to the late Professor Thayer, "it was perhaps fortunate for the judges and their successors that the questions then proposed came in so formidable a shape as they did"; for, he adds, "had they been brief and easily answered the Court might, not improbably, have slipped into the adoption of a precedent that would have engrafted the English usage upon our national system."

Had a similar attitude guided the actions of the judges and the constitution-makers of all our states, Mr. Ellingwood would have found it as difficult, or as easy, to write the work under review as the authors of those mythical treatises on snakes in Ireland and on the functions of the spleen are supposed to find their hypothetical tasks. For, little as one might suspect from the title, *Departmental Co-operation in State Governments* deals almost exclusively with advisory opinions furnished by judges to legislatures and members of executive departments. One brief chapter on "Other Forms of Judicial Influence" recounts the provisions in state constitutions vesting a veto power in a council of revision composed of members of the judiciary, or requiring periodic reports from the judges on the defects or omissions in the laws, with suggestions for appropriate cor-

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rective legislation. But "an investigation of the working of these devices," says the author, "is not within the scope of this work" (page 242). This self-restraint deprives Mr. Ellingwood of his only excuse for not so naming his book as to make clear that it deals with advisory opinions and with little else.

Within the field which he has chosen, however, the author has done a commendable piece of work. The first third of the book outlines succinctly but with sufficient fulness the history of the adoption of the device of securing opinions from judges in advance of legislative or executive action on the matters inquired about. The classification by jurisdictions facilitates ready reference to material which students of state government are most apt to be seeking. In Massachusetts, New Hampshire, Maine, Rhode Island, Missouri, Florida, Colorado and South Dakota the practice of advisory opinions rests on constitutional provisions. In twelve other states the question has arisen whether judges may give advice to other departments without express authorization in the constitution. Only in Minnesota and Ohio have the judges consistently refused to answer. As to the other ten states, Mr. Ellingwood summarizes his investigations by saying that "there is a pronounced tendency in recent years for the courts to put a stop to the giving of extra-judicial advice where it is not required by the constitution" (page 78). Most of the precedents which seem to sanction the practice "are of remote date, and many of them have been expressly repudiated" (*ibid.*). To the repudiations enumerated by the author must now be added In re Workmen's Compensation Fund, 224 N. Y. 13, decided last May, in which the New York Court of Appeals declared unanimously that it was no part of the judicial function to do more than determine controversies between litigants. The opinion was *obiter*, since it was held that the legislature had not authorized the reference of such questions as the Appellate Division had undertaken to answer, but it loses little, if any, of its weight on this account.

Mr. Ellingwood's succeeding chapters give an exhaustive review of the questions that have been answered in advisory opinions and of the attitude of the courts towards matters of practice in dealing with the questions propounded. His appendices gather together the pertinent provisions of state constitutions, and other relevant material for the British dominions and the Central and South American states, with a complete table of cases arranged chronologically by jurisdictions. In the introduction to the bibliography the author notes the scarcity of secondary material on the subject, but he seems to have missed

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entirely the exhaustive examination made by Mr. Henry A. Dubuque in 1890 and published in the *American Law Review* (volume 24, pages 369-398) under the title of "The Duty of Judges as Constitutional Advisors."

The research side of Mr. Ellingwood's work is immune from criticism, but his final chapter on "The Place of the Advisory Opinion" is less adequate. The disadvantages inherent in resort to this method of determining constitutional issues are too lightly passed over. Mr. Ellingwood records that "the tendency of the judges in most jurisdictions is to discourage the practice" (page 256), but he thinks that "the reasons given for this opposition do not seem very substantial" (page 257). One of these reasons is that "questions of law should be settled with reference to particular facts, never in the abstract" (page 254). By way of answer the author says that "we may set off against this the view of a North Carolina chief justice that 'the question is more easy of solution now, when it can be treated as a dry matter of constitutional law, than it might be hereafter, when complicated with collateral considerations'" (*ibid.*). And "an even more convincing answer" is found in the fact that the settlement of constitutional questions by advisory opinions is "provisional" only.

To the reviewer, neither of these answers is valid. An advisory opinion discountenancing proposed legislation is, it is true, not within the principle of *stare decisis*, but it may nevertheless be an effective weapon in the hands of objectors to similar legislation proposed years later when conditions have substantially changed. The nub of most constitutional controversies is the applicability of statutory provisions to concrete situations, as an examination of the judicial reports will establish. It may be easier to solve the question by regarding it "as a dry matter of constitutional law," but the difficulties thereby avoided are those that ought to be determining. Whether property or liberty is taken without due process of law depends upon whether the taking has sufficient justification, and the justification that is required varies with the extent of the taking. More and more constitutional disputes are settled by a judgment on a question of degree, and not by affirming or denying some point of doctrine. Cumbrous as is the prevailing method of judicial review, it is not likely to be improved by amendments which permit or require the courts to deal with constitutional problems *in vacuo*.

THOMAS REED POWELL.

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The History of Suffrage in the United States. By KIRK H. PORTER. Chicago, The University of Chicago Press, 1918. — ix, 260 pp.

Within the limits of his intentions the author of this little volume has made a serviceable contribution to the political history of the United States. There is in it nothing that is strikingly new either on the informational or the interpretative side. The development of suffrage qualifications is nevertheless traced with fair accuracy so far as these qualifications are based upon changes in constitutional provisions; and the debates of a number of constitutional conventions have been examined with considerable care to the end of setting forth the reasons which brought about the changes. It cannot be said, however, that the author has viewed the gradual development of our political democracy with reference to its economic and social significances nor has he endeavored at any point, except in considering the disfranchisement of the negro, to assess the results of that development. "Rarely has it been desirable in this work," he says, "to dilate upon the results of a new extension of suffrage" (page 191). Obviously a history of suffrage in the United States which ignores the economic class struggles out of which demands for extensions of the suffrage arose and the social and institutional results of such extensions is far from complete, no matter how admirable it may be as far as it goes.

Even within the scope which the author set for his study it is to be regretted that he did not include at some points a study of statutes as well as of constitutional provisions. The significance of the change, for example, from a property-owning qualification to a taxpaying qualification, upon which he lays considerable stress, cannot be satisfactorily understood without a study of the tax laws of the period involved. Apart from income and poll taxes, most modern taxpayers constitute a group identical with the owners of property. This was not always the case; but Mr. Porter's work on this point would have been greatly improved if he had set forth more clearly the distinction between these two classes. A comparative examination of election statistics, where these were available, would have lent additional illustration to the significance of this change. However, this book is not only useful for reference but is also well worth reading as a whole. Unfortunately for the latter purpose it is marred by a distressing immaturity of style.

HOWARD LEE MCBAIN.

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Popular Government. By WILLIAM H. TAFT. New Haven, Yale University Press, 1913.—ix, 283 pp.

In this interesting little volume Mr. Taft discusses a number of public questions under the convenient guise of a commentary on the preamble of the federal Constitution. Although to the layman this method of treatment will seem unduly formal, it gives a certain fine old flavor to the text which is refreshing in these journalistic days. In chapter i Mr. Taft examines the meaning of the term "the people"; in chapter ii he inquires into the nature of representative government; in chapters iii, iv and v he reviews direct government in all of its aspects; chapter vi is an excursus on constitutional interpretation; chapters viii and ix are commentaries on the American judicial system, the recall of judges, and the training of judges; chapter x is given over to a consideration of national defense and international relations.

It is unnecessary to say that the views here presented are conservative. They were fully and carefully expounded by the distinguished author during the campaign of 1912 and are in the main the common property of all thoughtful citizens who took the trouble to follow the development of issues during that memorable political contest. When we say, however, that the views are conservative, no one should leap to the conclusion that Mr. Taft is an obscurantist or that he is utterly oblivious to certain pressing evils in our present social and economic order. For example, he says on page 32:

> I am the least to minimize the critical nature of the conditions which prevailed in politics and business and society after the Spanish War and which seemed to have crystallized into a rigid control of all by great business combinations which could not be shaken. . . . That the occasion for the general alarm was justified, no one who has studied the situation can deny.

On page 34 he speaks of the "burden and suffering of the poor and oppressed under our present economic and social system"—thus putting to shame those genial optimists who constantly talk of this as a land where each one receives "exactly the reward to which his talents and labor entitle him." On page 92 Mr. Taft declares that he "would not minimize the number of the unfortunate who in the struggle for existence have fallen behind through the hardness of conditions rather than through their lack of industry and thrift. . . . Indeed no objection exists to the proposal to introduce what is called

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'collectivist' legislation, if sensibly and practically conceived, in which the rights of classes against each other may be recognized and the classes placed upon such an equality as to opportunity as the law can properly effect." Here is a salutary warning to those Bourbons who deny the existence of classes in the United States and base their judicial reasoning on the false premises of universal equality and liberty. Indeed, the spirit of the volume reminds one of Mathew Arnold rather than of a writer who had suffered from the cruel buffets of political fortune.

For the sake of adding a touch of firmness here and there it will not seem ungenerous to point out a few inaccuracies which may readily be corrected in a new edition. It was Madison, not Jefferson, who appointed Story to the Supreme Court of the United States (page 6). The term "colony" should not be used in connection with the ratification of the federal Constitution (page 11). The statement quoted from one of Mr. Root's Princeton lectures to the effect that "the expedient of the representation first found its beginning in the Saxon Witenagemot" will not bear the edge of modern historical analysis (page 23). It is not clear whether the list of suffrage qualifications given on page 12 is intended to represent colonial conditions or the state of affairs under the first constitutions. At all events it contains inaccuracies. Mr. Taft has confused the number of actual voters and the number qualified to vote at the time of the framing of the federal Constitution (page 13).

It is startling to find so logical a thinker as Mr. Taft saying on the same page that "the Constitution is the fundamental law adopted after deliberation, discussion, and final vote of the people," and that "the small vote by which in some states the most marked changes are brought about in their constitutions does not show that stability in our government which we were wont to think we had." Obviously Mr. Taft is confusing his personal wish with historical facts. In his message vetoing the recall in Arizona, he said that Constitutions "are the self-imposed restraints of the whole people upon a majority of them." How does this theory square with the statements that grave constitutional changes are too often made by small minorities? Does not respect for the patent facts in the history of the adoption of constitutions require us to throw overboard the fiction that they are made by "the whole people" and accept the truth that they are often made by minorities and imposed on majorities either through the ignorance or indifference of the latter?

Mr. Taft pays a just tribute to the monumental work of Mr. Far-

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rand, but it is hardly accurate to say that he has assembled into one work "a comprehensive view of all that is known of that wonderful instrument" [the Constitution] (page 126). The account of the federal judges on pages 130-131 is slightly misleading in that it leaves out of account both Rutledge and Ellsworth. The states' rights men were not "always" in the minority under Marshall's "control" (page 132); they got away from him in the case of Ogden *v.* Saunders. It is difficult to reconcile the extraordinary statement on page 196 to the effect that the judgments of Marshall and his court were not weakened by Taney and his associates with the decisions in such cases as Briscoe *v.* the Bank of Kentucky and Charles River Bridge *v.* The Warren Bridge. However, these and similar suggestions as to possible emendations need not be taken too seriously. Indeed, they only serve to show that a great judicial mind may be oblivious to the piddling requirements of "scholarship" without producing any serious consequences. At all events, one so well grounded as Mr. Taft in "the fixedness of moral principles which we learned at our mother's knee" (page 195) may quite properly ignore mere academic devices in his search for illustrations.

Charles A. Beard.

New York City.

The United States in the World War. By John Bach McMaster. New York, D. Appleton & Co., 1918.—460 pp.

Professor McMaster has done the general reader, and more particularly the student of history, a very real service in collecting in a single volume the important facts bearing on the entrance of America into the war and her participation therein down to the Picardy drive of the spring of 1918. The story is straightforward, exhaustive, and unadorned. From the famous murders of Sarajevo in June, 1914, down to the President's pledge of "force to the utmost" in his speech at Baltimore on the first anniversary of our acceptance of Germany's challenge to war (April 6, 1918), the events military and diplomatic which wove their tightening web about our government and people are detailed with a fulness that leaves no room for criticism or comment by the author.

Such a book offers the reviewer hardly more opportunity than a census report. There are no theories advanced to be criticized, no judgments pronounced to be tested — only the incontestable facts drawn from official sources and illustrated by quotations from the

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press on both sides of the Atlantic. The author uses throughout the book (sometimes to the point of tiring the reader a bit) the method which he followed in his monumental work on the *History of the People of the United States:* namely, the statement of an historical fact followed by a great variety of comments and criticisms on the same, culled from the papers and pamphlets and speeches of the day. In the present work perhaps the most useful feature (for the facts which Professor McMaster marshals are not at all inaccessible) is the wealth of quotations from the German-language press in this country and from important German papers like the Berlin *Vossische Zeitung*, *Post, Tageblatt*, and *Tages Zeitung*, the *Kölnische Zeitung*, the *Hamburger Nachrichten*, the *Frankfurter Zeitung*, and others. They all go to prove what has received so much corroboration from diplomats and dentists as to need no further proof—that the leaders of German thought were smitten with total blindness.

Probably Professor McMaster would be prompt to disclaim any attempt to make his book "popular"; it was enough to recite the facts of the most tremendous importance and interest to the American public. Yet one cannot help regretting that these facts are not enlivened by a little reminiscence, analogy, or even prophecy, here and there. The pages on the activities of German spies in this country, for example, give many opportunities for interesting animadversions. But the author is not diverted or deflected from his straight and narrow path of narrative. There are no touches like the linking of Prince Henry's visit in 1902 with the German propaganda in America, or like Frau Ober keeling over in a faint on the stage of the opera when the news of war was announced, or like Hugo Schmidt, director of the Deutsche Bank, riding freely in Central Park eight months after war was declared, while American citizens in Berlin were treated like dangerous prisoners.

However, on his straight and narrow path of narrative the author has walked with sure and steady step. The chapters suffer now and then in arrangement, from the author's desire to treat a topic in each and still observe certain chronological limits. For example, in the midst of chapter ii (page 44) he turns abruptly from the subject of pro-German propaganda in America to the totally unrelated subject of Belgian relief; and in chapter xiv (page 77) he switches as abruptly from the discussion of food conservation to the despatch of the Expeditionary Force to France. These important subjects might each well have had its own chapter; also "Rationing and Fighting," which are combined in chapter xvi. A few errors have unavoidably

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crept into a text of nearly 500 pages: *Lisle* for *Lille* (page 100); *February 1* for *February 10* as the date of the first note to Germany on the submarine war zone (page 124); *Geneva* for *Genoa* as the destination of an ocean liner (page 280); *Courtnai* for *Courtrai* (page 283). *Tcheco Slovaks* (page 303) looks affected to a public so thoroughly accustomed to *Czechoslovaks*. We do not see why in a book for adults Professor McMaster should tone down Mr. Gerard's threat to remain by his American fellow-citizens in Germany "till hell freezes over," into the weak respectability of "till kingdom come" (page 335). There is sometimes also an apparent reluctance to state names, as if a censorship were operating: phrases like "a certain senator" or "the Chancellor" leave one to recall, if he can, who the senator was or to think out whether Bethmann-Hollweg, Michaelis, or Hertling was chancellor at the time.

Professor McMaster's book is the most valuable compilation that we have of facts for which the reader would have to go to hundreds of official documents and unofficial newspaper articles.

D. S. MUZZEY.

A Republic of Nations. A Study of the Organization of a Federal League of Nations. By RALEIGH C. MINOR. New York, Oxford University Press, 1918.—xxxix, 316 pp.

The present volume justifies the expectations which one would naturally indulge regarding a new work from the pen of the author of Minor on the *Conflict of Laws*. It is thoughtful, analytical, logical. It exhibits a clear conception of what is essential to the effective accomplishment of an object which many persons are at the moment desirous to attain, even though it may betray hopes which the event will disappoint.

Grouping international controversies into two great classes, consisting (1) of disputes behind which, on one side or the other, lie ulterior evil or illegitimate designs of aggression or attack upon the rights of other nations, and (2) of disputes arising spontaneously and without ulterior designs, Mr. Minor clearly perceives the fundamental inadequacy of so many of the "leagues," proposed in recent as well as in former days, to meet the exigencies of the case. So far as concerns, specifically, a league "for the enforcement of compulsory arbitration or conciliation, with a covenant by all to unite in war or other forcible measures against any nation declining to engage in either form of settlement," he submits that there are, quite apart

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from the reluctance of nations to consent to the effective prevention of war, "practical obstacles" to the successful operation of a plan of that nature arising out of the difficulty of securing concert of action among the members of the association. How, he asks, would troops, ships, and expense be apportioned? Who would command? Would all the parties unite in opinion as to who began or was responsible for hostilities? Would not the judgment of the members, and consequently their attitude, be affected by preëxisting friendliness or unfriendliness to one or the other of the disputants? For these and other reasons he makes the plea that the league "take the form of the establishment of a federal international government, by which the nations will either agree, under proper safeguards, to surrender to the government of all jointly their power to injure or work injustice upon their sister States or agree that they shall not be exercised at all."

On this line the author proceeds to work out a plan in detail, and in an appendix, at the end of the volume, presents, in parallel columns, for purposes of comparison, the Constitution of the United States and his "Tentative Constitution of the United Nations."

While Mr. Minor is by no means disposed to rely unduly upon judicial tribunals as a means of preventing armed conflicts, he does not wholly escape the tendency, which seems to be almost universal, to assume that the Supreme Court of the United States has played a more important part than it really has done in the settlement of political controversies. But for the circumstance that the Dred Scott case is habitually overlooked, we should deem it unnecessary to mention the fact that the miscalculated pronouncement of the Supreme Court in that case, closing the door to compromise, rendered the Civil War morally inevitable. On the other hand, distinctively "interstate controversies," to which the author refers, have not been so very numerous; nor has the court always settled even such as have been brought before it. Kentucky *v.* Denison involved an interstate controversy, but the result was a fiasco, the governor of Ohio being left to continue what the court declared to be a clear defiance of the national Constitution and laws. It is some years since West Virginia was adjudged to be liable for a part of the debt of Virginia, but West Virginia has so far omitted to discharge that liability. No doubt these incidents go to sustain rather than to weaken Mr. Minor's main thesis, that there is little analogy between the Supreme Court of the United States and the proposed "world court" of which so much has been said.

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There is yet another misconception for which, although the author lends it his countenance, he cannot fairly be held responsible, and which we might for that reason be inclined now to pass over, were it not so constantly reiterated. We refer to the supposition that international arbitration has "failed" because it has represented, in theory and in practice, the idea of "compromise" rather than that of "judicial" decision. The present prevalence of this supposition is no doubt chiefly to be ascribed to the activities of certain societies, exhibiting a certain unity of direction and control, which have industriously disseminated the impression, not indeed with malice, but without examination of the facts. The impression involves two assumptions, (1) that "compromise" has not formed an important element in "judicial" judgments, and (2) that it has, on the contrary, distinctively characterized the proceedings of international tribunals of arbitration. Both these assumptions are hasty, superficial, and inaccurate. So far as concerns international arbitrations, it has fallen to the lot of the reviewer to become familiar with the proceedings of substantially all of them, ancient and modern, so far as they can now be known; and he does not hesitate to affirm, upon the strength of this somewhat exact knowledge of the subject, that the assertions so constantly made during the past few years, as to the "non-judicial" or "unjudicial" character of arbitral proceedings, are due to unverified preconceptions and are essentially misleading.

J. B. Moore.

The People's Part in Peace. By Ordway Tead. New York, Henry Holt and Company, 1918.—ix, 156 pp.

It was said of a well-known writer on international law, in the middle of the last century, that he presented all views and all contentions with "laborious impartiality." This cannot be said of the vast number of volumes now appearing on peace and the organization of the world so as to secure it. Many authors have specifics; others have none, but profess to deal with the entire problem; while yet others discuss particular phases of it. Mr. Tead assures us that "the plain people of the world want peace," but "not peace at any price." This condition is not wholly new. He does not, however, undertake to estimate all the elements of "price," but endeavors to answer the question how "practical effect" can be given to the peace terms and the conditions contained in the Inter-Allied Labor War Aims which were published in a supplement to the *New Republic* of

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March 23, 1918, and which he declares to be "in complete harmony with President Wilson's fourteen-point speech."

It may be unnecessary to raise a question as to what effect recent elections, particularly in Great Britain, may have had on the position, international as well as national, of the declaration of the Inter-Allied Labor War Aims in the negotiations soon to take place in France. Mr. Tead's discussion is not wholly concerned with that declaration; and, although he professes to treat "only" of the economic phases of international reorganization, he discusses at some length the question of a league of nations, the economic guarantees of peace, international labor legislation, the basis of representation in "international government," national economy, and "the spiritual guarantees of peace." He recognizes the truth that, while the struggle for existence is an all-pervasive influence, ideas not essentially economic enter into the problem of peace and war. Among these he specifies the exaltation of force, in the conception that might makes right; the doctrine that the state is supreme and is a thing in itself; that the state exists as an agent for the creation of national profits; that trade exists primarily for the private traders, and that certain races are inferior and unable to govern themselves, either immediately or ultimately. He believes that, while these ideas have "wide currency" in Germany, they are maintained elsewhere by a sufficient minority to make it worth while to understand the dangers which their acceptance entails. He believes it to be necessary to distinguish more carefully than is usual the difference between incapacity for self-government and an immaturity in national development due to historic forces, especially as a lack of national cohesion may be found to prevail in parts of the world that properly resent the imputation of inferiority. He thinks that "the new world, the world of the next generation, is unmistakably destined to swing about a new center—the human individual," and that to spiritualize the purposes of life is the "paramount task of reconstruction." For old methods he would substitute "social control" for "social ends"; and he declares that "social control depends upon the enthroning of a new principle in individuals and in nations—the principle of the value of people as supreme over profits and property, over secret treaties and States."

We hope that the author's generous views may find wide acceptance. So far as concerns "secret treaties," it may be remarked that, with the exception now and then of a stealthy agreement for the division of territory, the treaties by which "profits and property"

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have been exalted have usually been of a flagrantly open character. Treaties relating to trade and tariffs are the ones whose approval by legislative chambers has in modern times most generally been exacted. We would not discourage anyone's hopes or aspirations; but it is idle to shrink from the conclusion that the regeneration of the world will continue to depend less upon the enunciation of benevolent principles than upon the precise, practical application of them.

J. B. MOORE.

The Ethics of Co-operation. By JAMES H. TUFTS. New York, Houghton Mifflin Company, 1918.—73 pp.

A lecture delivered at the University of California on the Weinstock Foundation now appears in the form of this booklet. The author maintains that the political, economic and religious institutions throughout history appear to be organized under one of the systems characterized as dominance, competition, or co-operation, or some combination of them. Each one of these schemes has given rise to its own particular conception of what in the view of mankind may be regarded as good and reputable.

For the most part, it is urged, the civilized portion of mankind has outgrown the scheme of organization founded on the idea of dominance. The prevailing form of social organization is now competitive. Obviously, however, the competitive system also is out of touch with modern requirements of life in society, since the criterion of success under this system is personal gain and glory. The way out of these difficulties seems to be the organization of society on a co-operative basis in which the standard of honor and success is the promotion of the common good through the pursuit of a common purpose.

According to the author's interpretation of competition and co-operation there is not a radical distinction between them. Competition guided by the "invisible hand" works for the common good quite as effectively as co-operation (page 34), without, however, the common good being consciously the purpose of the human agent under the competitive system. Co-operation consists in making the common good the deliberate object of individual endeavor. That is to say, what is required to make the transition from a competitive to a co-operative system is not so much a change in the institutional fabric of civilized society as a change of heart (attitude) in the individual. Viewed in this light, the advent of the new era (of co-

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operation) is much simplified and also rendered painless. Besides, there is the advantage of bringing about a change in the political, economic, and religious life of society without altering it.

Whatever doubt there may exist in the reader's mind with respect to the practical risks and responsibilities involved in the co-operative system is set at rest by a ready reference to America, "which has experimented on a larger scale with co-operation—political, economic, and religious—than any other continent," and which "may well assert steadily and insistently that this is the more hopeful path" (pages 51-52). Doubtless the co-operation in the several fields referred to in America is the conceptual transfiguration of the "healthy" competition in those fields under the magic sway of the "invisible hand."

LEON ARDZROONI.

COLUMBIA UNIVERSITY.

The Arbitral Determination of Railway Wages. By J. NOBLE STOCKETT, JR. New York, Houghton Mifflin Company, 1918.—xxv, 198 pp.

Notwithstanding our continued material and mechanical progress, the peaceful methods of dealing with disputes between wage-earner and employer have scarcely advanced beyond the crude and primitive stage of conjecture and compromise.

The present volume is an attempt on the part of the author, whose untimely death has cut short a promising career, to place arbitration as applied to railway wage disputes on a more secure basis. In common practice the method has been based on compromise rather than on any definite judicial principle with a view to determining the merits of the question under controversy. It is urged that on this account "the possibilities of arbitration have not been realized . . . that this principle [of compromise] is almost invariably condemned; and that this condemnation is justified by a consideration of the evil effects of compromise in arbitration proceedings" (page xix).

In his endeavor to discover a scientific basis of procedure Mr. Stockett enters upon a painstaking and detailed examination of cases. The various principles which stand out in the course of the investigation are found to be standardization, the living wage, the increased cost of living, and increased productive efficiency.

It is justly pointed out that a standard rate of wages to railway employes, whether it be applicable to the single system, the district,

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or the entire railway industry, fails to take account of differences in employment conditions in the several divisions. Any unequal distribution of responsibility, however, is largely a matter of accident, and it is the neutralization of accidental advantages or disadvantages for which organized labor is constantly striving, and on account of which the standard rate is demanded. To argue for a rate of payment which takes account of differences in requirements and responsibilities of employment is therefore to argue for a wage determination which is no less a matter of arbitrary chance than is a standard rate irrespective of conditions of work.

The difficulties in the way of determining or defining the living wage are clearly recognized by Mr. Stockett, but, for all that, as a principle it is found quite indispensable (page 70). The inference from the general discussion of this point seems to be that the living wage in the case of unskilled laborers is one and the same with the minimum of subsistence. The wages of the skilled group are calculated on the basis of this minimum, an additional increment of wages being allowed them because of the "increased labor, risk and responsibility" involved in their work of this class. Presumably the skilled workers, then, are to get something more than a living wage.

The principle of the increased cost of living follows in logical sequence. There can be no discrepancy between the level of prices and the rate of wages; but in the course of the argument it develops that something more than mere maintenance of the standard of life is intended by the requirement of a close correspondence between prices and wages. What is desired is to advance and improve the standard of life of the worker. Consequently a correspondence between prices and wages is not to be tolerated in case of a fall in the general price level (page 179). The inconsistency of this position is defended on the ground of social expediency and also because of the common feeling of resentment on the part of laborers against reduction of wages on the plea of lowered cost of living. It seems, therefore, that other considerations than those which might lend themselves to scientific precision must be taken into account.

Lastly, it is urged that wage awards should be based on increased productive efficiency. The main problem, of course, in the application of this standard has to do with the allotment and imputation of a share in the increased product to the various factors of production. The method employed as well as the conclusions reached on this point are what might be expected from the postulates and premises of the conventional productivity theory of distribution — that the

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laborer gets what he produces and produces what he gets (pages 150 *et seq.*).

In spite of some of the difficulties here pointed out the book commends itself to the serious attention of all students who are interested in establishing the method of arbitration on a foundation somewhat more trustworthy than mere speculative adventure. In both the statement of the problem and the development of the argument the author has displayed unusual powers of analysis. The logical perplexities that may be met with here and there are not to be imputed to lack of insight on his part. They are rather to be ascribed to the inadequacy of the instruments which have been selected to deal with the problem in hand. These perplexities are inherent in the use of such undefinable and uncertain economic categories as the living wage and productive efficiency. Arguments dealing with questions of distribution and based on these time-honored postulates can scarcely hope to advance much beyond the celebrated conclusion reached by Hudibras in his speculations on the problem of value.

LEON ARDZROONI.

COLUMBIA UNIVERSITY.

Jewish Philanthropy. By BORIS D. BOGEN. New York, The Macmillan Company, 1917.—xvii, 391 pp.

That the Jewish people take care of their own dependents is well known, but few indeed are those who know that before the Jews were permitted to land on these shores they had to promise Governor Stuyvesant that they would care for their own poor in such manner as to prevent them from becoming burdensome to the general community. The old promise need trouble no one any longer. In the words of Dr. Bogen "the Jews have become part and parcel of this country; they share its responsibilities with the citizenry and are entitled to the same privileges."

According to Dr. Bogen, the first Jewish charitable endeavor in this country was the relief agency, which was usually intimately connected with the synagogue. Then followed the first Jewish philanthropic institution, in the form of an orphanage, established in New York in 1832. The placing of Jewish orphans in non-Jewish institutions meant their de-Judaization, and it was desired to retain these children in the fold. The need of the peculiar Jewish atmosphere, and the dietary laws of the Orthodox Jews, emphasized the necessity for creating institutions for the aged and the sick, while the handling

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of the immigrant was considered another reason for specific Jewish agencies. But what appears to Dr. Bogen as the basic reason for Jewish philanthropy is "the emotional nature of humanity which is responsible for the intense feeling for kith and kin."

In his view, the problem of Jewish poverty, too, is unique; for it does not carry with it the burden of heredity, and is not characterized by a downward tendency, repellent of reclaiming influences. Though poor and economically disabled, the Jews never before constituted the lowest strata of society, nor were they the inhabitants of the slum districts of their native cities. If they were poor it was due to exceptional laws calculated to handicap them in the struggle for existence. The Jewish poor, therefore, must be handled differently from the poor of the general community, the treatment in the one case being prevention, and in the other reclamation work. The general philanthropic agency deals with classes that are to be lifted out of their degradation, while the Jewish agency, as a rule, deals with those who have resisted degradation and who must be helped in the heroic struggle. While there is poverty among the Jews, there is no pauperism.

As to the extent of Jewish philanthropy in the United States, Dr. Bogen estimates that there are about 2,000 agencies expending at least $10,000,000, not including the various efforts in connection with war relief, which, under the leadership of Mr. Jacob Billikopf, collected over $10,000,000 in 1917. There are, according to the author, at least 8,000 persons ministering to the Jewish poor. At least 2,000 of these workers have professional training. The Jewish theory of charity is based on the principle of *Zdakah*, which is the Hebrew equivalent for justice or righteousness. Numerous passages in the Bible command the prosperous Jew to provide for those in want, and in the *Shulkan Aruch* (The Prepared Table), a code of Jewish law, there is a special section on charity, in which a valuable system is worked out, in some ways far in advance of modern philanthropy.

In addition to the general relief agencies, which are basic in all Jewish communities, there are some unique national agencies, ranging from the maintenance of hospitals for tubercular patients, encouragement of Jewish farm colonies, the higher education of orphans and other worthy young men and women, to the American Jewish Committee, which undertakes to speak in the name of the American Jews on matters of national and international import.

The particular contribution of the Jews to the field of philanthropy is the "federation idea." Cincinnati lays claim to the first

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real federation, and other important cities followed, New York organizing more than a year ago. The "federation idea" makes possible more effective work by uniting the community, thus bringing in more liberal subscriptions, at the same time eliminating indiscriminate solicitation of funds, and the resultant duplication of effort and expenditure.

While Dr. Bogen makes no claim to scientific treatment of the subject, he has produced a valuable handbook. His pioneer work should be followed by other volumes; for even the general literature of social service is not well supplied with works of a scientific nature.

OSCAR LEONARD.

ST. LOUIS, MISSOURI.

Industrial Experience of Trade School Girls in Massachusetts. Boston, Women's Educational and Industrial Union, 1918.—275 pages.

The question of vocational education for girls is still in the stage of controversy and debate. Probably the majority of those who think about it at all would maintain that vocational education for girls must center in their problems as future home-makers. In view of the comparatively short time that girls are employed in wage-earning pursuits, one would say offhand that it was hardly worth while to put time and money into specific trade training.

There is, however, a growing sentiment in favor of adequate preparation for industrial work. Trade schools for girls which were founded ten or fifteen years ago and supported by private funds largely for their general educative value and for their service in more efficient home-making, are now, as part of our system of public education, faced with the necessity of meeting a new test, that of trade efficiency. To what extent can the trade school equip a girl as an efficient producer? The main purpose of the present study is to answer this question.

This is done by an intensive investigation of the industrial experience of the girls who used in a wage-earning capacity the training they had received in the trade schools of Boston, Cambridge and Worcester. It may be noted incidentally that only one-third of the total number who have attended these schools have put their specific training to commercial use. On the basis of the industrial experience of this group, it is apparent that the trade-school girl is not clearly more efficient as a producer than the girl who is trained in the shop.

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This statement should be qualified in the case of the beginner. The girl who has been to the trade school receives a higher initial wage but she does not maintain this relative superiority throughout her working career.

By far the most interesting and valuable part of the study is the analysis of the extent to which the trade school is responsible for the generally unfavorable results of its training. It appears that the schools have confined their training almost exclusively to the hand-sewing trades—custom dressmaking and millinery. The authors of the report show in a convincing way that the recent evolution of both these branches of industry has been such that they offer "continually decreasing opportunities for the young inexperienced worker." They demand "a definite type of worker, with some general education, maturity, skill, and experience," and they are "wholly inadequate" as a primary basis for a system of trade training in the cities studied. The future of trade training is here shown to be bound up with a wider selection of trades. It must be of course an outgrowth of the industrial needs of the community. Failure to keep in closest touch with changing industrial opportunities is going to result in futile training.

There is a peculiar timeliness to this study when girls and women are going into industrial occupations at an abnormally rapid rate, and when it would appear that for at least a generation to come they will make up a larger proportion of the working force than ever before. It is a valuable addition to the Studies in Economic Relations of Women.

EMILIE J. HUTCHINSON.

COLUMBIA UNIVERSITY.

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BOOK NOTES

History when used as an instrument for the promotion of international antipathy has proved its effectiveness for the business immediately in hand. It has successfully nurtured and perpetuated ill-feeling between nations, and powerfully aided the cause of war. At times, however, it has turned out to be a veritable boomerang, returning, as it were, to confuse those who have employed and applauded it, for the foe of yesterday may become the ally of today. Thus Frenchmen and Americans, co-operating with the British in the face of a common peril, have found that the conventional interpretations placed upon England's past behavior by their own patriotic historians are embarrassing and have to be explained away. "Authority" can now be found on the American side of the Atlantic for the view that the American Revolution was a regrettable occurrence, was in fact a revolt not from England, but from a German prince on the English throne; and on the French side of the Channel hitherto unsuspected virtues are discerned in "perfidious Albion." Among our enemies, no doubt, there is the same tendency to "re-write" history. The ancient antagonism of Prussia and Austria, we do not doubt, is discreetly slurred over in both countries. In *France, England and European Democracy, 1215-1915* (translated from the French by Leslie M. Turner; New York, G. P. Putnam's Sons, 1918 pp.) M. Charles Cestre, Professor of English at the University of Bordeaux, undertakes to show that the present Anglo-French alliance rests upon a solid historical foundation. The argument, in M. Cestre's hands, is as simple as the reasoning of an elementary theorem of Euclid. England invented Liberty. France invented Equality. Liberty and Equality have produced modern democracy—ergo, England and France are the natural guardians of democracy against the Germans, and their alliance is indissoluble, Q. E. D. The past wars between England and France are, of course, not to be denied, but they should leave no legacy of bitterness, for, it now appears, they were always waged in a spirit of chivalry! One wonders whether the time will ever come when men will cease from the attempt to justify action and policy by appeals to a strained and distorted interpretation of history.

The translation into English of Treitschke's *History of Germany in the Nineteenth Century* by Eden and Cedar Paul, of which the

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first three volumes have been reviewed in the POLITICAL SCIENCE QUARTERLY, has now reached its fourth volume (New York, R. M. McBride, 1918; xx, 644 pp.), which reproduces the greater part of the third volume of the original. Mr. W. H. Dawson again furnishes an illuminating introduction. The period covered is that from 1819 to 1830; the main theme is that of the intimate life of German courts where intrigue and petty politics ruled. There are some of the best of all Treitschke's literary passages here, descriptions which are really graphic, and characterizations which really recall to life the figures of these provincial statesmen. But it is a world outworn. Only the antiquarian historian, outside Germany, will linger long over this story, when the world is moving as it is today. Historical scholarship, however, owes a debt to the editors and publishers of this work, which makes available to the curious reader limited to the English language a narrative which furnished inspiration to the Germany of the days before the war.

The Life of John Caldwell Calhoun (New York, Neale Publishing Company, 1917; two volumes, 453, 478 pp.), by William M. Meigs, is a comprehensive biography of a statesman whose influence and achievements in our history fully warrant it. The author manifests a reassuring degree of poise and impartiality in his attitude toward the great issues of the period, and a full acquaintance with the sources of information, especially those that have become available in recent years through the work of E. D. Adams, Justin H. Smith and G. L. Rives. Through the well-directed industry of Mr. Meigs, therefore, Calhoun's career and character are set forth with a fulness that is lacking in Gaillard Hunt's sympathetic sketch, and a fidelity to truth that cannot be found in Holst's amiable caricature. The present volumes are likely to be the standard life of the statesman for a long time. They are praiseworthy as biography and history, but not unimpeachable as literature. Witness the passage (volume ii, page 40) in which Calhoun, in a single sentence, is pictured as buried under "mountains of odium," drifting rapidly, and "being at bay."

In *Judicial Tenure in the United States* (New Haven, Yale University Press, 1918; vii, 234 pp.) Dr. William S. Carpenter gives a pleasing, if loose and impressionistic, survey of familiar knowledge on the appointment and removal of judges in the United States. The author doubts whether there is any evidence that superior results have followed from any particular method of selecting the judiciary, and concludes that "the method of selecting judges is perhaps best determined by local conditions." He thinks that the conviction of

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Judge Archbald indicates that impeachment is an adequate method of getting rid of judges who are wholly unfit for office, even though not guilty of indictable crimes or misdemeanors. His other conclusions, where he expresses them, are equally moderate.

For a book that can be read in less than two hours, Mr. Charles W. Bunn's *Jurisdiction and Practice of the Courts of the United States* (St. Paul, West Publishing Co., 1914; vi, 129 pp.) presents the outlines of the subject with which it deals in tolerably satisfactory fashion. It will save practitioners from the more obvious errors, and will give to students of the federal system an inkling of the part played by the federal courts in enforcing the limitations of the federal Constitution, in interpreting and applying federal statutes, and in settling controversies between citizens of different states.

Those desiring a wider and more thorough knowledge of the subject will find Mr. George W. Rightmire's *Cases and Readings on the Jurisdiction and Procedure of the Federal Courts* (Cincinnati, The W. H. Anderson Company, 1917; xvi, 892 pp.) a handy helpmate. Here in convenient form are gathered all the more important cases in which the provisions of the statutes and the Constitution relating to the exercise of federal judicial jurisdiction have been interpreted and applied. By notes and other explanatory matter the energetic student is given sufficient guidance to work out for himself any problem with which he has to deal. The collection is, however, designed primarily for use in law-school classes in which the case method of instruction prevails. It should serve to discourage the continuance of thin lecture or text-book courses on the subject of federal jurisdiction and to substitute something more solid in their place. Hitherto the absence of such a tool has furnished excuse for teaching the subject after a fashion which resembles the art of the phonograph rather than the discipline and thoroughness of the laboratory.

As the field of public administration steadily expands in the United States, the need becomes increasingly pressing for a more thorough study of the principles of law in their relation to actual administrative practice. The administrator tends too frequently to look upon the law as a necessary evil; he often does not know enough law to appreciate its strength as a weapon in his hands. The practitioner at the bar is satisfied to discover the legal principles that apply to a particular state of facts arising out of administrative action; with the problems of the administrator he usually has no concern. The most recent type of student of public administration directs his energies to surveying, chart-

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ing and criticising the administrative organization from a more or less theoretical point of view; he does not trouble himself sufficiently about studying the law as a practical agency of administrative operation. Has not the time arrived when the law of officers needs to be studied jointly in the light of the rules laid down by the courts and of the experience and problems of administrators? Such a study might have been expected from a distinguished physician and student of public health problems who writes a treatise on the *Legal Principles of Public Health Administration* (Chicago, T. H. Flood and Company, 1914; xxxvi, 859 pp.). Dr. H. B. Hemenway's work is, in this respect, disappointing. It follows too closely the usual type of legal treatise. However, it measures up to most of the accepted standards of its type; and even though it contains more than is necessary of discussion that is elementary in our legal and governmental system, it ought to be of no inconsiderable use to both attorneys and health officers. In *American Public Health Protection* (Indianapolis, Bobbs Merrill Company, 1916; 283 pp.), by the same author, there is an interesting discussion of a number of modern problems of health administration, together with proposals for needed reforms. The author is an ardent advocate of a national department of public health and of better and different education for health officers.

In *Our Cities Awake* (New York, Doubleday, Page and Company, 1918; xxiii, 351 pp.), Mr. Maurice Llewellyn Cooke presents a number of interesting touch-and-go observations about the governmental problems of American cities in general and of Philadelphia in particular. Mr. Cooke was Director of Public Works in Philadelphia during the administration of Mayor Blankenburg, 1912–1916. Whether or not the title of this work is a challenge to the time-worn jest about soporific Philadelphia, it is certain that political Philadelphia was more than normally awake under Mayor Blankenburg and that the author of this book contributed in no small measure to this circumstance. He writes with enthusiasm for, and faith in, the ultimate destiny of municipal democracies in the United States. It is difficult, of course, to be factual and inspirational at one sitting, just as it is difficult to be at once a systematist and an idealist. It is refreshing to find so much of inspiration and of idealism from the pen of an author who confesses that he is "an engineer specializing in management." There is not much of fact or system or even sequence of ideas in this little book. It is none the less interesting.

The City Worker's World in America (New York, The Macmillan Company, 1918; 236 pp.), by Mary Kingsbury Simkhovitch, is the

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latest addition to the American Social Progress Series. It is an intelligent and sympathetic portrayal of the environment of the urban industrial worker, depicted from the rich first-hand experience of the author as director of Greenwich House. The varied aspects of the city worker's world—work and play, education, health, and the more general issues of poverty, politics, and religion—are outlined with a skilful hand. Both for its content and for its stimulating presentation it should find a wide group of readers.

The Carnegie Endowment for International Peace has continued its issues in the division of economics by the publication of *The Colonial Tariff Policy of France* by Arthur Girault, Professor at the University of Poitiers (Oxford, Clarendon Press, 1916; viii, 305 pp.). Professor Girault gives a remarkably lucid account of the tariff policy that has been followed by France in connection with every one of its colonies, large and small. He shows that in the past three-quarters of a century there have been three different systems pursued. First came that of the Second Empire, known as tariff autonomy. This was followed by that of the Third Republic, known as tariff assimilation, by which is meant the assimilation of the colonial tariff policy to that of the mother country and which amounts, in practice, to the policy of protection against foreign nations and of preferential or exclusive treatment so far as France is concerned. In recent times there is evidence of a tendency toward the third plan or policy of tariff personality, as it is called, which involves the adoption of a more liberal tariff régime. Professor Girault is clearly opposed to the whole theory of protection and assimilation, and shows in detail what he considers to be some of the injurious results. The book may therefore be considered a strong plea for the open-door policy. Whether one agrees with the author or not, all students will welcome the book for the wealth of material which it contains and for the admirable way in which the data are treated. A word must be said also for the exceptionally fine make-up of the book from the point of view of paper, letterpress and binding.

The appearance a few years ago of the study by Professor Fite on The Social and Industrial Conditions in the South during the Civil War has encouraged Mr. Frederick Merk to pursue the investigation in detail in a separate state. The result has been *The Economic History of Wisconsin during the Civil War Decade*, which has been published in a sumptuously printed volume by The State Historical Society of Wisconsin (Madison, 1916; 414 pp.). Although the author informs us frankly that the general background of the study

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is due to Professor Fite's book, it represents none the less a thoroughgoing and painstaking investigation. Mr. Merk relies almost entirely upon the available printed material which was so abundant that no recourse was taken to manuscript sources. A large part of the study is devoted, as was to be expected, to agricultural and lumbering conditions. To the general reader not the least interesting contribution is the account of the anti-monopoly movement in the Badger State in the years immediately following the Civil War. Although unsuccessful at the time, it was the forerunner of the more important movement in the following decade.

A little known chapter in economic history is covered by *Christianapolis, an Ideal State of the Seventeenth Century* (New York, Oxford University Press, 1916; 287 pp.), translated from the Latin of Johann Valentin Andreas, with an historical introduction, by Felix Emil Held. The book of Andreas was at one time widely read and exerted an influence comparable in some respects to that of More's Utopia. Dr. Held, who is associate professor of German at Miami University, Ohio, furnishes an introduction of 128 pages, tracing in detail the origin and the influence of the work, which occupies a leading position in the literature of later medieval ideal states. Students of socialism in the wider sense, as well as of the history of ideas, will be grateful to Professor Held for his interesting contribution.

Two new volumes have appeared in the *Memoires et Documents pour servir à l'histoire du commerce et de l'industrie en France,* edited by M. Julien Hayem. The fourth series (Paris, Hachette et Cie., 1916; 318 pp.) deals with a number of topics covering the period from the sixteenth to the eighteenth century, such as the commercial relations of Bordeaux to the Hansa towns, the labor problem in Marseilles, and the druggists' gild in Paris etc. Four of the contributions are written by M. E. Isnard and two by E. H. Guitard. On the other hand, the fifth series (276 pp.), which contains a preface by Professor R. Georges Lévy, contains only three articles, all of them written by M. P. H. Barrey. These deal respectively with the Normans in Morocco in the sixteenth century, a study of Havre in the sixteenth and seventeenth centuries, and a discussion of the colonial problem during the revolution. As in the earlier volumes, these researches afford exceedingly valuable material to the student.

The second volume of *The Economic Annals of the Nineteenth Century*, by the lamented William Smart, covers the period from 1821 to 1830 (London, Macmillan and Company, 1917; xxi, 584

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pp.). This volume is even more interesting than its predecessor, as it covers a period which is comparatively unfamiliar to the average student of the present generation. In addition to the usual discriminating review of the particular topic under discussion, Professor Smart has added, at the end of each year, a valuable statement of the more important economic publications of the preceding twelve months. In some cases, however, the author does not evince an encyclopedic, or at all events a discriminating, knowledge of the literature in question. For instance, in referring to the well-known works of Heathfield, Hopkins, Spence, Whitmore, Western and Sinclair, of the year 1822, he states: "Among the book advertisements I find the following—many of them, I dare say, of as much importance as the 'Analytical Investigation of the Scriptural Claims of the Devil.'" Such lapses from grace, however, are very infrequent. It is a matter of profound regret that the work should have come to an end through the death of the gifted author, and it is sincerely to be hoped that the publishers may arrange for a continuation through other hands.

There are two excellent histories of English finance in the nineteenth century, and there is at least one standard history of taxation in England. But for some quite inexplicable reason a detailed exposition of the methods of raising and spending the revenue had never been attempted until the publication of Mr. E. Hilton Young's *System of National Finance* (London, Smith, Elder and Company, 1915; vii, 364 pp). There may be great changes in the fiscal system of England as a result of the war; but as regards its main lines the existing system of preparing the estimates, and the long-existing usage in accordance with which money is raised by Act of Parliament—either by annual acts or acts more permanent in character—and is appropriated, also by Act of Parliament, to the various services, will continue as before the war. Each stage in the preliminary processes—the estimates and the votes—is described by Mr. Young. Then he turns to the collection of the taxes imposed by Parliament—to the history, organization and work of the Board of Commissioners of Inland Revenue and the Board of Customs and Excise, one established in Somerset House, and the other in the Customs House of the Port of London. Next he describes the channels through which the money so collected becomes available for the army and navy, the Education Department, the Local Government Board, and the other spending or disbursing departments of the government. All this is done to trace, as Mr. Young writes, "the taxpayer's pound from its exit from his pocket to its entry into the pocket of the state as revenue, and back again as expenditure into

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the pocket of some other taxpayer who is the state creditor." Much detail is essential to a book so planned; but Mr. Young handles all his detail admirably. As he presents it, it is never wearisome or difficult to grasp; and students of parliamentary government and of the place of the cabinet in the British system will find as much interest in Mr. Young's sidelights on parliamentary procedure in relation to money bills, as they will in the detail which he has collected at first-hand in the state departments where the estimates are prepared, at the offices of the boards by which the revenue is collected, at the Treasury, and at the offices of the paymaster-general and the auditor-general.

Mr. William English Walling and Dr. Harry W. Laidler have been so influenced by recent developments in the world war as to edit *State Socialism: Pro and Con, With a Chapter on Municipal Socialism* (New York, Henry Holt and Company, 1917; xliv, 647 pp.). The title, it may incidentally be remarked, would have been much improved had the editors avoided the colloquial *con*, which means nothing in any language, instead of *contra*. Moreover, although the editors have tried to be entirely fair, and while they profess to give the data rather than the arguments, it will be found that the data on the "con" side are exceedingly meagre and that there is not a little argument on the other side. The material is assembled from a large variety of sources, and deals with almost every phase of economic life. As a collection of facts showing what is being attempted by government in various parts of the world, the book will be found very useful.

The proposals of England's greatest radical economist for the restoration of labor standards after the war—*The Restoration of Trade Union Conditions* (New York, B. W. Huebsch, 1917; 109 pp.), by Sidney Webb—have already been superseded. They have been superseded in the best possible sense, by Mr. Webb's own later writings. "Labor and the New Social Order," which is the British Labor party's declaration of faith and policy for economic reconstruction, is, we are informed, to a considerable extent the work of Mr. Sidney Webb. In this document ideas of the earlier pamphlet are given the setting and endorsement which are a complete tribute to the genius of the man. Mr. Webb possesses a quality unfortunately rare in scholars—he is able to set the ordinary man thinking of industrial relations in terms at once vivid, vital and far-reaching. For these reasons this little book is an interesting commentary upon the more substantial Labor Party program. The five points of his new charter appear again, elaborated, in the party platform; but significantly enough, all

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mention of the "restoration of trade union conditions"—discussion of which consumes over half of the work under review — is there omitted. British labor has gone on, far beyond the demands for mere restoration which this book voices, and is proclaiming the inevitability of a new social order with labor at its helm. Even Mr. Webb, must look back on his work of less than two years ago, and smile the smile of the apostle who has seen stranger sights than his prophetic vision would have dared conceive. But as far as American labor problems go, the volume has a value and interest which is far from antiquarian. It is an immensely practical handbook of sound industrial policy which can profitably be taken over *in toto* by the industrial leaders of America. Whatever programs of reconstruction America sees fit to adopt, the problems dealt with by Mr. Webb must be met much in the way that Mr. Webb suggests. If this book is little animated by a realistic psychological sense, by the reference of institutional reforms to their basis in human nature, this will have to be forgiven Mr. Webb. He was not brought up in the psychological school. But if anyone thinks he is unable to learn in this direction, a reading of his latest brochure, *The Works Manager Today*, will prove the contrary. The Fabian patriarch is possessed of a flexibility to which the book under review does not adequately testify. But it should not be read by the student as a separate work; it should be read as the preliminary memorandum of larger subsequent efforts. For the American man of affairs, however, the book carries its own practical story and has its own superlative value.

Mr. Mark Wymond has recently issued two books on the railroad problem. The one is entitled *Railroad Valuation and Rates* (Chicago, Wymond and Clark, 1916; 344 pp.); the other bears the title *Government Partnership and Railroads* (Chicago, Wymond and Clark, 1917; iii, 178 pp. and appendix). The author has had a varied experience as engineer and railroad expert. As a consequence, the first volume contains much that is worth the consideration of students in general on the principles involved in the subject of valuation. Mr. Wymond's conclusions, which are set forth on pages 208 to 210, are, as might be expected, perhaps a little too favorable to the contentions of the railroads, but are none the less worthy of serious attention. His chapters on railway rates are not so good, and the whole book suffers somewhat in methods of presentation, but it constitutes a real contribution to the subject. The second volume, which was evoked by the serious plight in which the railways found themselves in 1917, is in some respects more novel. Mr. Wymond is

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very much opposed to government ownership and suggests a plan for government aid through guarantee of interest and dividends. It is significant, however, that we find in the volume no treatment of the history of the similar policy pursued at various times by France toward its railroads. Impartial students will also not be much influenced by the chief reasons on which Mr. Wymond bases his opposition to government ownership: "To base railroad policy on a paternalistic principle and our general business policy on an individualistic principle will be inconsistent. . . . Crossing alien principles will beget a mongrel general policy" (page 178).

An unusually valuable discussion is contained in *Public Utility Rates*, by Harry Barker (New York, McGraw and Hill Book Company, 1917; 387 pp.). The author, who has had a long experience as engineer in connection with the various kinds of public utilities, has been collecting notes for over a decade on the subject of cost of service, valuation and depreciation. He has now worked them up into a comprehensive volume and has applied his general principles not only to railways, but to the express, water, gas, electricity, telephone and street railway business. The result is a mass of fresh and unusually well presented material. The author not only gives us these elaborate technical details, but shows that he is familiar with the recent development of the law and is by no means unmindful of the public interests in the subject.

In *War Time Control of Industry* (New York, The Macmillan Company, 1918; 307 pp.) Mr. Howard L. Gray deals primarily with the experience of England. Taking up in turn the changes that have supervened with control of railways, of munitions, of labor, of coal, of wool and woolens, of hides and leather, of shipping, of food, and of agriculture, he gives a well-balanced statement of the chief ends that it has been sought to accomplish. There is also some comparison with the system as worked out in the United States which, in its earlier stages at least, was in some degree of a more voluntary nature. As a preliminary study of the subject, it will be found very useful.

The amateur industrial engineer who desires to do the "big, easy, obvious things" in the direction of eliminating fatigue and bettering working conditions in plants in which he can exercise control will find much to interest him in *Fatigue Study* (New York, Sturgis and Walton Company, 1916; viii, 159 pp.) by Frank B. and Lillian M. Gilbreth. It is a simple, clear, elementary exposition of the problem, outlining methods in considerable detail and giving many practical illustrations. To the student of business organization who is familiar

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with the literature of the field, the book's chief interest lies in the description of the latest developments in the technique of "motion study," which is the means particularly sponsored by Mr. Gilbreth for solving the problem.

After entirely too long a silence, Mr. Henry Higgs has again put the serious student under obligation by the appearance of two books on public finance. In *The Financial System of the United Kingdom* (London, Macmillan and Company, 1914; 218 pp.) Mr. Higgs presents in a remarkably lucid way the salient facts of the British budget. Over half of the book is devoted to a series of appendices containing forms which are of great interest and value to the administrator. While this book is intended primarily for the specialist, the second work will appeal to the general reader. Mr. Higgs was selected to give the Newmarch lectures at University College in 1916. He has now published them under the title of *National Economy, an Outline of Public Administration* (London, Macmillan and Company, 1917; 447 pp.). The six lectures deal respectively with the national economy and formal finance, economic organization and business management, control of expenditure, revenue and administration, financial policy and the budget, public debt and *haute finance*. Here, as in his similar Newmarch lectures of over twenty years ago, on Workingmen's Budgets, the author discloses his capacity to clothe a technical subject in an attractive dress; and many a reader who has been introduced to the subject by Mr. Higgs will surely find his appetite whetted for further investigation. The book, moreover, is as sensible and well balanced as its style is attractive.

In *The Wool Industry* (Chicago, A. W. Shaw Company, 1916; 253 pp.) Professor Paul T. Cherington presents a fresh and interesting study of the commercial problems of wool and woolens. Apart from the chapters on the wool supply, both domestic and foreign, as well as on the technical processes of the woolen industry—all of which may be found equally well explained in other publications—Professor Cherington's real contributions to the subject are found in his chapters on the selling house, the jobbing trade, styles in the marketing of women's piece goods, the ready-to-wear clothing industry, and the department stores. In all these chapters we find material which, however well known to the trade itself, has been more or less unfamiliar to the general student. While the conclusions are perhaps not very startling, they are marked everywhere by sober judgment and good sense. The book forms a welcome addition to the descriptions of American economic life.

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The growing complexity of modern business, with the individual becoming more and more the plaything of forces over which he has no direct control, has opened up a field of educational opportunity which for the present is being privately exploited. The modern business man is seeking light. He is endeavoring to understand the operation of the forces in whose grip he finds himself. Among the private organizations that are utilizing the opportunity that this demand for light creates is the Alexander Hamilton Institute of New York City. It has a whole series of books dealing with different aspects of "Modern Business." The series is apparently under constant revision with the object of getting an increasingly stronger offering. The latest addition in the field of banking is *Banking* (New York, Alexander Hamilton Institute, 1917; xvi, 348 pp.), by Major B. Foster. This is a very satisfactory introductory treatment of the subject, being largely descriptive in nature and covering the aspects of the subject that are of importance to the business man. There is a discussion of the different classes of banks — savings, investment, commercial—of state and national banking, of the systems abroad and of the Federal Reserve System. While the treatment is rather summary, it is clear and not without a certain liveliness. The author makes a little slip, however, to which attention should be directed because it involves a point of at least potential importance. On page 304 he states that all obligations of the reserve banks are payable in lawful money—gold and silver certificates, silver dollars etc. This enables the reserve banks to protect gold reserves to some extent. Federal reserve notes are payable in gold and no choice is here presented, but to the extent that notes are less important than deposits the choice open in the redemption of deposits may in times of stress prove to be of considerable significance.

For over a quarter of a century law students in France, who, as is well known, must study economics and finance for two years, have depended very largely upon the textbook of the late M. Cauwès, whose work was published over thirty years ago. The need of something more up-to-date has led Professor Camille Perreau to issue his *Cours d'Économie Politique* (Paris, Librairie Générale de Droit et de Jurisprudence, 1914-1916; 552, 600 pp.) in two volumes. Professor Perreau takes what he describes as a strictly realistic view of economics. Far less attention is paid to theory than is found in the ordinary American textbook, and much more space is devoted to the facts of economic life, and especially to French legislation on economic topics. From this point of view the work will be found valuable to American readers also.

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